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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 293

EDWARD LAUF AND AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 73, PETITIONERS,

vs.

E. G. SHINNER & COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 7, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

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EDWARD LAUF AND AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 73, PETITIONERS,

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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DISTRICT COURT OF THE UNITED STATES, Placita.

For the Eastern District of Wisconsin.

United States of America, }
Eastern District of Wisconsin. } ss.

At a stated term of the District Court of the United States of America, for the Eastern District of Wisconsin, begun and held at the city of Milwaukee, in said district, on the first Monday, (being the 5th day) of October, A. D. 1936, present the Honorable Ferdinand A. Geiger, District Judge, presiding:

Among other the following proceedings were had, to-wit:

E. G. Shinner & Co., Inc.,
vs.
Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local #73, the names of the members thereof being unknown to the plaintiffs. } In Equity

Be it remembered that heretofore, to-wit: on the 11th day of April, 1935, came the plaintiff and filed its Bill of Complaint against the defendants as contained in transcript of record of former appeal in Cause No. 5551, and which transcript of record in the former appeal taken in said cause is made a part of this record pursuant to stipulation dated January 18, 1937 and filed in the U. S. Circuit Court of Appeals for the Seventh Judicial Circuit.

ment of
dence,
Jan.
1937.

11 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—4593) • •

STATEMENT OF EVIDENCE.

The following is a statement of the additional evidence produced at the trial of this case before the Honorable Ferdinand A. Geiger, on the 13th day of October, 1936, insofar as the evidence is essential to the decision of the questions presented by this appeal.

Appearances:

Messrs. Gold & McCann, represented by Walter Gold, Esq., and

Ray T. McCann, Esq., appearing for Plaintiff;

A. W. Richter, Esq., appearing for the Defendants.

It was stipulated that the testimony taken upon the hearing for the preliminary injunction should be considered as testimony upon the trial and should be considered by the court as such. Such testimony is found in the printed transcript of record in the former appeal taken in this cause entitled:

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local #73,
Appellant,
vs.
E. G. Shinner & Co., Inc.,
Appellee.
} No. 5551.

LOUIS GUSICH, a witness on behalf of defendants, testified as follows:

Direct Examination.

My name is Louis Gusich. I live at 309 W. National Avenue, and am a butcher by occupation. I worked for Shinner & Co., three years ago steady for three or four weeks,
12 and was a member of defendant union Local 73, and have been a member all the time and am now. I also worked for Shinner & Co., during the winter of last year, three days

a week. I was then a member of defendant union. No one there or any member of the firm, nor officers of the Shinner & Co., ever talked to me about this union. Sometimes they asked me if I belonged to the union and I said, yes. I asked for a steady job with Shinner. I talked to Mike Dropp manager of all the markets about getting a steady job. He said, no, you belong to the union, I can't hire you. Before that he had asked me about belonging to the union. I had no conversation with him about the shop union of Shinner & Co., and no officials asked me to join it. That is all the conversation I had with him. I quit because they would not give me more work.

Cross-Examination.

I quit along in the winter-time, couldn't say what month in 1936. I started working as an extra for Shinner after Christmas in 1935. I was not an employee of Shinner up to Christmas in 1935. I can't remember when I had the first job with Shinner. I worked there three days a week. I quit a long time after I had the conversation with Mike Dropp. I quit because I got a steady job at Neumanns. All I could get from Shinner was three days a week, the busy days in the meat markets. When I worked at Shinner's store after I had the talk with Mike Dropp, I don't know. The reason I left was because I got steady employment.

ALOIS TANSKE, witness on behalf of defendants, testified, as follows:

My name is Alois Tanske. I live on Hopkins road and am a member of defendant Local 73. I was not employed by Shinner. I was never at any time employed by Shinner. Last July I asked for the foreman in the Mitchell Street Store and asked him for work. One of the foreman came up and asked me if I belonged to the union.

Mr. McCann: That is objected to as incompetent, immaterial and hearsay.

A. (Continuing) And I says, "Yes."

The Court: Just a moment. To whom did he talk?

A. With the foreman.

Mr. Richter: Q. Do you know his name?

A. No.
13 Q. Is he here?
A. I don't see him.
Q. You did not ask him his name?
A. No.
Q. How do you know he was a foreman?
A. I asked for the foreman and one of the boys called him, so he says—

Mr. McCann: I object to it as incompetent and immaterial.

The Court: Objection is sustained. I don't know that it makes any difference,—last July he had a talk with somebody there, is about as far as he can go.

The Court: What does it mean to say that he asked the foreman of the shop? I don't know whether the foreman had authority to hire men, or anything of that kind, or whether he was foreman of the butcher shop routine.

Mr. McCann: That is objected to as incompetent and immaterial, and for the further reason it is long after the commencement of this action.

The Court: Last July; that is what I mean, long after the action was commenced.

Mr. Richter: This is during the pendency of the action.

The Court: That is all right; the action was determined at the time of its commencement.

Mr. Richter: The controversy is on during the entire time of the pendency.

The Court: No, I don't think so. The controversy is determined as of the time of the commencement of this action. There is no change in the pleadings here?

Mr. Richter: No, there is no change in the pleadings, but the pleadings themselves state the—

The Court: I know, but they set it forth as of the time of the commencement of the action.

Mr. Richter: But it is purely continuation in the strict sense of the word, or the major controversy at the time of the pleading.

14 The Court: The objection is sustained on that ground.

Mr. Richter: That is all we have except the witness whom we would like to call, who would testify that he was discharged because of union activity, because of membership in the defendant local union.

The Court: Well, the witness is in the hospital?

Mr. Richter: He is in the hospital at Rochester, Minnesota, and he will be back here next week. We thought he

would be back here; he telephone last night and said he thought he would be in Milwaukee by Monday.

The Court: What is the name of the witness?

Mr. Richter: Rudolph Alterman.

The Court: Was he a witness on the former hearing?

Mr. Richter: He was not.

Mr. McCann: He was still in the employ at that time, and of course we deny the reason for discharging him was that he was a member of the union, but it is admitted that he was in the employ at the last hearing, so whatever he intends to prove is something that occurred long after the case was heard here before, long after the case came back from the Circuit Court of Appeals, so how could that affect the issues?

Mr. Richter: We contend that this controversy was going on all the time. We can show that negotiations have been going on. In the meantime, if there is a labor controversy, then it was still in existence and is now.

The Court: Well, the plaintiff may take judgment.

It Is Hereby Stipulated And Agreed that the above and foregoing shall constitute the written statement of evidence in the above entitled action to be used in the record on appeal to the Circuit Court of Appeals.

Dated, this 27 day of January, 1937.

W. L. GOLD,
RAY T. MCCANN,
Attorneys for Complainant.
A. W. RICHTER,
Attorney for Defendants.

Approved this 30th day of January, 1937. Approval of Judge.

F. A. GEIGER,
District Judge.

15 (Endorsed) In the District Court of the United States. • • (Caption 4593) • • Additional Statement of Evidence of Appeal. A. W. Richter, Attorney for Defendants. Filed Jan 30 1937. B. H. Westfahl, Clerk.

2 Oct. 13, 1936—Findings of Fact & Conclusions of Law, filed as follows:

d Oct. 12, 936.

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Eastern District of Wisconsin.

E. G. Shinner & Company, Inc., *Complainant,* *vs.* Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, the names of the members thereof being unknown to this plaintiff, *Defendants.*	In Equity No. 4593. Civil Docket.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on to be further heard on the 13th day of October, 1936, W. L. Gold and Ray T. McCann appearing as solicitors for the complainant, and A. W. Richter appearing for the defendants, and after hearing the allegations and proofs of the parties, and being advised in the premises, I, the Judge before whom said cause was tried, do determine and find as

Findings of Fact.

1. Complainant is a corporation duly organized and existing under and pursuant to the laws of the state of Delaware and located and having its office and principal place of business in the city of Wilmington in said state of Delaware, and a citizen and resident of said state, and at the time of the commencement of this action was and now is the owner and operator of five meat markets in the city of Milwaukee, Wisconsin, situated as follows:

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue.

2. That the matter in controversy in this cause exceeds, exclusive of interest and costs the sum, and exceeds the value, of $3,000.

3 3. The defendant, Edward Lauf, is a citizen and resident of the city of Milwaukee, state of Wisconsin, and is

the business manager of the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, which latter defendant is an unincorporated labor union, and a citizen and resident of the state of Wisconsin.

4. Complainant has in its employ in Milwaukee, Wisconsin, approximately 35 persons, who are employed in the business of conducting the aforementioned meat markets and that none of said employees were, at the time of the commencement of this suit, members of the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73.

5. The defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, have made demand upon complainant that it require its said employees, as a condition of their continued employment by complainant, to become members of such defendant labor union, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73. That the complainant has notified its employees that they were free to join said union if they so desired, and complainant is now ready and willing to permit them to so join, but that said employees have declined and refused to join said labor union; that said defendant labor union was not the union chosen by any of the said employees of the complainant to represent them in any respect with the complainant.

6. For the purpose of coercing the complainant to require its employees to join and become members of said defendant labor union, and accept it as their bargaining agent and representative, as a condition of their continued employment, and for the purpose of injuring and destroying the business of the complainant at said meat markets, in the event complainant refused to yield to such coercion, the defendants have conspired and concerted between them to cause, and
4 have, commencing on April 6, 1935, and continuously thereafter until enjoined pendente lite on April 19, 1935, caused false and misleading signs, placards and banners to be placed before the said meat markets of the complainant and have caused persons, none of whom are employees of the complainant, to parade and picket before the said meat markets of the complainant, and have falsely accused the complainant of being unfair to organized labor in its dealings with its said employees, and that all of the defendants have prevented patrons and prospective patrons of the complainant from patronizing its said meat markets by molestation,

annoyance, threats and intimidation, and said defendants would have continued said action but for said injunction pendente lite, and said defendants would continue such action in the future unless permanently enjoined.

7. That complainant has suffered, and will suffer, irreparable injury from the continuance of the practices of the defendants, and that the customers and prospective customers of the complainant are and will be restrained and intimidated from patronizing said complainant, by reason of the acts of the said defendants.

8. There is in existence no labor dispute between complainant and defendants, or any or either of them.

9. That complainant has no adequate remedy at law, and

10. That defendants have failed to establish the allegations of their cross-complaint.

I find as

Conclusions of Law.

1. That complainant is bound under the terms of 29 U. S. C. A., Section 102, as well as Sections 268.18 and 268.19, Wis. Stats. of 1933, to permit its employees free agency in the matter of the choice of labor union or organization to act as their representatives.

5 2. Complainant is entitled to a writ of injunction of this court permanently restraining and permanently enjoining the defendants, and each of them, as well as their officers, agents, employees, associates and confederates from doing the acts complained of herein.

3. That the undertaking executed on behalf of the complainant upon the issuance of the injunction pendente lite be and the same hereby is cancelled, and said Fireman's Fund Indemnity Company be and it hereby is discharged from any and all liability on said undertaking.

4. That the cross-complaint of the defendants herein be dismissed on its merits.

5. That the complainant have and recover of the defendants, and each of them, the sum of $_____ cost and disbursements to be taxed and inserted herein by the clerk of this court.

Dated, Milwaukee, Wisconsin, October 13 1936.

F. A. Geiger,
District Judge.

Endorsed: "Filed Oct 13, 1936 B. H. Westfahl, Clark."

6 And afterwards, to-wit: on the eighth day of said Term, to-wit: on the 13th day of October, A. D. 1936, the following proceedings were had, to-wit: Entered O. 13, 1936

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4593) * *

October 13, A. D. 1936.

Before the Hon. Ferdinand A. Geiger, Judge.

This cause came on to be further heard on the 13th day of October, 1936, and it was stipulated that the evidence offered by the plaintiff upon its application for injunction pendente lite be received as and for the evidence of this plaintiff in this case, and the defendants offered their proof, and the court having been advised in the matter, and having signed findings of fact and conclusions of law.

Now, Thereupon, and upon consideration thereof,

It Is Ordered, Adjudged And Decreed as follows:

1. That the cross-complaint of the defendants be and it hereby is dismissed on the merits.

2. That a writ of permanent injunction issue under the seal of this court permanently enjoining and restraining the defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, and their officers, agents, employees, associates and confederates, from in any wise picketing the meat markets of the

7 complainant located at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue,

all in the city and county of Milwaukee, state of Wisconsin, and from seeking in any manner to coerce the complainant, E. G. Shinner & Company, Inc., to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, or to coerce said complainant to compel its said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, as the bargaining agent and representative of

said employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing the complainant at its meat markets as hereinbefore described.

3. That the undertaking executed by Fireman's Fund Indemnity Company on behalf of the complainant upon the issuance of the injunction pendente lite be and the same hereby is cancelled, and said Fireman's Fund Indemnity Company be and it hereby is discharged from any and all liability on said undertaking.

Dated October 13 1936.

Enter.

F. A. Geiger,
District Judge.

1 Oct. 15, 36. 8 Oct. 15, 1936—Writ of Permanent Injunction, filed as follows:

IN THE DISTRICT COURT OF THE UNITED STATES

• • (Caption—4593) • •

WRIT OF PERMANENT INJUNCTION.

Whereas, E. G. Shinner & Company, Inc., complainant, has filed in the office of the clerk of the District Court of the United States for the Eastern District of Wisconsin, a bill in equity duly verified in the above entitled matter praying that the defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, be permanently restrained and permanently enjoined from in any wise picketing the meat markets of the complainant at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the city and county of Milwaukee, state of Wisconsin, and from seeking in any manner to coerce the complainant, E.

G. Shinner & Company, Inc., to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local 73, or to coerce said complainant to compel its said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local number 73, as the bargaining agent and representative of said
9 employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing the complainant at its meat markets as hereinbefore described; and

Whereas, the Honorable Ferdinand A. Geiger, Judge of the District Court of the United States for the Eastern District of Wisconsin, has this day made and entered an order allowing a writ of permanent injunction to be issued,

Now, Therefore, you, the said defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local number 73, your officers, agents, employees, associates and confederates are hereby strictly and permanently enjoined and restrained from in any wise picketing the premises of the complainant, E. G. Shinner & Company, Inc. at

1212 West Mitchell Street,
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue,
3429 West North Avenue

all in the city and county of Milwaukee, state of Wisconsin, and are hereby strictly and permanently enjoined and restrained from seeking in any manner to coerce complainant, E. G. Shinner & Company, Inc., to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local number 73, or to coerce said complainant to compel said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local number 73, as the bargaining agent and representative of said employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in

any wise unfair to the said defendants or organized labor
10 generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing the complainant at its meat markets as hereinbefore described.

This permanent injunction must be strictly observed under the penalties of the law.

Witness: The Honorable Ferdinand A. Geiger, the Judge of said court with the seal thereof hereto affixed this 13th day of October, A. D. 1936.

B. H. Westfahl,
(Seal) *Clerk.*

Endorsed: "Filed Oct 15, 1936, B. H. Westfahl, Clerk."

Jan. 8, 37.

16 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4593) * *

ASSIGNMENT OF ERRORS.

The defendants state that there is manifest error in the proceedings in this cause and in the rendition of the decree and judgment and issuance of a writ of permanent injunction entered by the court herein on October 13, 1936, and assign as errors on appeal,

That the court erred:

1. In granting the complainant a writ of permanent injunction and erred in not denying complainant said injunction.

2. In finding,

"8. There is in existence no labor dispute between complainant and defendants, or any or either of them."

3. In failing to find that there was a labor dispute between complainants and defendants, and that such dispute is governed by the provisions of

"Title 29, U. S. C. A. Sec. 113, subsections a, b, c and d thereof."

4. In finding those facts set forth in paragraph five of the findings and particularly that,

"complainant is now ready and willing to permit them to so join, but that said employees have declined and refused to join said labor union; that said defendant labor union was not the union chosen by any of the said employees of the

complainant to represent them in any respect with the complainant."

5. In finding the facts set forth in paragraph 6 of the findings, particularly that the defendants

"caused false and misleading signs, placards and ban-
17 ners to be placed before the said meat markets of the complainant."

and that the defendants

"have falsely accused the complainant of being unfair to organized labor in its dealings with the said employees."

6. In finding,

"That complainant has suffered, and will suffer, irreparable injury from the continuance of the practices of the defendants, and that the customers and prospective customers of the complainant are and will be restrained and intimidated from patronizing said complainant, by reason of the acts of the said defendants."

7. In its conclusions of law, to-wit:

"1. That complainant is bound under the terms of 29 U. S. C. A. section 102, as well as sections 268.18 and 268.19, Wis. Stats. of 1933, to permit its employees free agency in the mattter of the choice of labor union or organization to act as their representatives.

"2. Complainant is entitled to writ of injunction pendente lite of this court restraining and enjoining the defendants, and each of them, as well as their officers, agents, employees, associates and confederates from doing the acts complained of herein."

8. In restraining the defendants by writ of injunction from engaging in the following acts:

(a) From

"in any wise picketing the meat markets of the complainant."

(b) From

"advertising, stating or pretending that the complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally."

(c) From

"in any wise persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing complainant."

9. In refusing to permit all competent evidence in support of the answer and cross-complaint of the defendants to the effect that the complainant was guilty of violating Sections 268.18 to 268.30 inclusive, of the laws of the State of

Wisconsin, in that the complainant expressly pleaded reliance on 268.18 of the Wisconsin Statutes as a basis for injunctive relief.

10. In failing to find that complainant was not entitled to the relief prayed for, because the complainant has failed to comply with the obligations imposed upon it by Section 268.18, Wisconsin Statutes of 1933, in the following respects:

18 (a) That the complainant denied to its employees full freedom of association and self organization;

(b) That the complainant interfered with the free choice of representatives by its employees;

(c) That the defendant pursued a course of conduct designed to prevent self organization and free choice of representatives by assisting, fostering and promoting a so-called company union.

11. In failing to find the complainant was not entitled to the relief prayed for because the complainant had failed to comply with the obligations imposed upon it by Section 102 of Title 29 U. S. C. in the following respects:

(a) That the complainant denied to its employees, full freedom of association and self organization;

(b) That the complainant interfered with the free choice of representatives by its employees;

(c) That the defendant pursued a course of conduct designed to prevent self organization and free choice of representatives by assisting, fostering and promoting a so-called company union.

12. In failing to find that complainant was not entitled to the relief prayed for because the complainant had failed to make every reasonable effort to settle the dispute of the parties either by negotiation or with the aid of any governmental machinery of mediation or voluntary arbitration as required by Section 108 of Title 29, U. S. C.

13. In failing to find the specific requirements of the provisions of 29 U. S. C. Sec. 107, in the following respects:

(a) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(b) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection;

(c) That unlawful acts have been threatened and will be

committed unless restrained or have been committed and will be continued unless restrained;

(d) That substantial and irreparable injury to complainant's property will follow.

19 14. In issuing a writ of permanent injunction against Edward Lauf and against Amalgamated Meat Cutters and Butcher Workmen of North America, Local 73, because there is no evidence that Edward Lauf or said union have made any threats or committed any lawful act, nor had they or either of them knowledge of any such acts.

15. In issuing an injunction against officers, agents, employees, associates and confederates, there being no evidence that officers, agents, employees, associates and confederates of the defendants committed any unlawful acts, and for the reason that there is no showing that the defendants had any officers, agents, employees, associates and confederates for the purpose of committing illegal or unlawful acts.

16. In its exclusion of evidence.

17. In its admission of evidence.

Wherefore, the defendants pray that the decree and judgment of the above court directing the issuance of the writ of permanent injunction in the above action be reversed.

A. W. Richter,
Defendants' Attorney.

20 (Endorsed): In the District Court of the United States • • (Caption—4593) • • Assignment of Errors. Filed Jan 8 1937. B. H. Westfahl, Clerk.

21 Jan. 8, 1937—Petition for Appeal, filed as follows: Filed Jan. 8, 1937.

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—4593) • •

PETITION FOR APPEAL.

To the Honorable United States Circuit Court of Appeals for the Seventh Circuit, and to the Honorable District Court of the United States for the Eastern District of Wisconsin, the Honorable F. A. Geiger, Judge thereof Presiding:

The above named defendants considering themselves aggrieved by the Final Decree and Judgment in the above en-

titled cause on the 13th day of October, 1936, do hereby appeal from said decree and judgment to the United States Circuit Court of Appeals for the Seventh Circuit, and state that their reasons for said appeal are specified in the assignment of errors filed herewith, and they, therefore, pray that an appeal may be allowed and that a transcript of the record and of the proceedings, and papers, evidence and exhibits in said cause, duly authenticated, together with the material exhibits introduced and used as evidence therein, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

Dated, this 7th day of January, 1937.

A. W. Richter,
Attorney for above named defendants.

Endorsed: "Filed Jan. 8, 1937. B. H. Westfahl, Clerk."

Filed Jan. 8, 1937.

22 January 8, 1937—Order Allowing Appeal, filed as follows:

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4593) * *

ORDER ALLOWING APPEAL.

The defendants having prayed an appeal from the final decree and judgment herein,

It Is Ordered that the appeal so prayed for is hereby allowed and the Clerk of this Court is directed to make return to this appeal in accordance with the rules and practice of the United States Circuit Court of Appeals for the Seventh Circuit.

It Is Further Ordered that the appeal cost bond to be given by defendants is hereby fixed at the sum of Two Hundred Fifty ($250.00) Dollars.

Dated, at Milwaukee, Wisconsin, this 8th day of January, 1937.

F. A. Geiger,
Judge of the United States District Court for the Eastern District of Wisconsin.

Endorsed: "Filed Jan. 8, 1937. B. H. Westfahl, Clerk."

23 January 9, 1937—DEFENDANT'S BOND ON APPEAL, filed as follows: Filed Jan. 1937.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4593) * *

BOND.

Know All Men by These Presents, that we, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, of the City of Milwaukee, Wisconsin, as principals, and Standard Accident Insurance Company, of Detroit Michigan, as surety, are held and firmly bound unto, E. G. Shinner & Company, Inc., a Delaware corporation, in the penal sum of Two Hundred Fifty ($250.00) Dollars, good and lawful money of the United States, to the payment of which well and truly to be made we bind ourselves, our heirs, legal representatives, executors, administrators, successors or assigns, jointly, severally and firmly by these presents.

Sealed with our seals and dated this 9th day of January, 1937.

Whereas, lately at a session of the District Court of the United States for the Eastern District of Wisconsin, in a suit pending in said court between the above named complainant and the above named defendants, a final decree and judgment was rendered against said defendants, and said defendants obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and filed a copy thereof in the Clerk's office of the same court and a citation directed to the plaintiff citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be held at Chicago, County of Cook, State of Illinois,
24 within thirty (30) days from the date hereof.

Now, the Condition of the above obligation is such that if said defendants shall prosecute their appeal to effect, and shall pay all damages and costs that may be awarded against them if they shall fail to make their plea good, then the above

obligation is to be void, otherwise to remain in full force and effect.

Edward Lauf,
Amalgamated Meat Cutters and Butcher Workmen of North America, Local #73,
By Edward Borczykowski,
Fin. Sect.
Principals.
Standard Accident Insurance Company,
By T. Z. Clayton,
(Seal) *Surety.*

Approved, January 8, 1937.
(Signed) F. A. Geiger,
United States District Judge.

Endorsed: "Filed Jan 9 1937 B. H. Westfahl, Clerk."

d Feb. 4, 937.

27 February 4, 1937—PRAECIPE, filed as follows:

IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—4593) • •

To the Clerk of the United States District Court for the Eastern District of Wisconsin:

Sir:

Please prepare the transcript of record and proceedings in the above entitled cause for use on appeal heretofore allowed herein, and include in said transcript the following:

1. Transcript of record on former appeal in this cause #5551, (which need not be transmitted by the Clerk).
2. Stipulation that transcript of record of former appeal be incorporated without reprinting the same.
3. Findings of Fact and Conclusions of Law.
4. Judgment.
5. Permanent Injunction.
6. Statement of Evidence.
7. Assignment of Errors.

Petition for Appeals.

8. Order allowing appeal.
9. Defendants' Bond on Appeal.
10. Citation.

11. Praecipe.
12. Clerk's Certificate.

It Is Hereby Stipulated and Agreed that the foregoing may be approved as the Praecipe in the case without further notice, and without the statutory period of time for respondent to file further praecipe.

28 Dated, this 30 day of January, 1937.

(Sgd.) W. L. Gold,
Ray T. McCann,
Attorneys for Complainant.

(Sgd.) A. W. Richter,
Attorney for Defendant.

The foregoing praecipe is hereby approved and it is so ordered.

Dated, this 3rd day of February, 1937.

(Sgd.) F. A. Geiger,
District Judge.

Endorsed: "Filed Feb 3, 1937 B. H. Westfahl, Clerk."

29 CERTIFICATE OF CLERK.

United States of America
Eastern District of Wisconsin } ss.

I, B. H. Westfahl, Clerk of the District Court of the United States of America for the Eastern District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, which are copies, with their originals now on file and remaining of record in my office, and that they are true copies of the pleadings, decree, and other papers and proceedings. I further certify that hereto attached are the original assignment of errors, citation and additional narrative statement of evidence on appeal, in the case of E. G. Shinner & Co., Inc. *vs.* Edward Lauf, et al.

In Testimony Whereof, I have hereunto set my hand, and duly affixed the seal of said Court at the City of Milwaukee, in said District, this 3rd day of February, in the year of our Lord, one thousand nine hundred thirty-seven, and of the Independence of the United States, the 161st.

B. H. Westfahl,
Clerk.

(Seal)

25 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—4593) * *

CITATION.

United States of America to E. G. Shinner & Company, Inc., Greeting:

You are hereby notified that in a certain case in equity in the United States District Court for the Eastern District of Wisconsin, wherein E. G. Shinner & Company, Inc., is complainant, and Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, are defendants, an appeal has been allowed the defendants therein to the United States Circuit Court of Appeals, Seventh Circuit. You are hereby cited and admonished to be and appear in said court at Chicago, thirty (30) days after the date of service of this citation to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable F. A. Geiger, Judge of the United States District Court for the Eastern District of Wisconsin, this 8 day of January, 1937.

F. A. Geiger,
United States District Judge.

26 (Endorsed) In the District Court of the United States * * (Caption—4593) * * Citation Copy Received January 11, 1937 Gold & McCann, Attys for Pltf. Filed Jan 14 1937 B. H. Westfahl, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Filed Feb. 1937.

For the Seventh Circuit.

E. G. Shinner & Company, Inc.,
Plaintiff,

vs.

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73,
Defendants.

6172

It Is Hereby Stipulated and Agreed, subject to the consent of the Judge of the United States District Court for the Eastern District of Wisconsin, and of the Circuit Court of Appeals for the Seventh Circuit, that the entire transcript of record in the former appeal taken in this cause entitled: "Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Appellants, *vs.* E. G. Shinner & Company, Inc., Appellee," No. 5551, (82 Fed. Rep. (2nd) 69) may be made a part of the transcript of record on this appeal without reprinting the same.

Dated January 18, 1937.

W. L. Gold &
Ray T. McCann,
Attorneys for Complainant and Appellee.
A. W. Richter,
Attorneys for Defendants and Appellants.

Upon reading and filing the foregoing stipulation,

It Is Ordered that the entire transcript of record in the former appeal taken in this cause entitled: "Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Appellants, *vs.* E. G. Shinner & Company, Inc., Appellee," No. 5551, be and the same is hereby made a part of the transcript of record on this appeal without reprinting the same.

Dated January 28 1937.

By the Court,

Evan A. Evans,
Judge of the United States Circuit Court of Appeals, for the Seventh Circuit.

(Endorsed) Filed Feb 10 1937 Frederick G. Campbell, Clerk.

[fol. 22] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

At a regular term of The United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court House in the City of Chicago in said Seventh Circuit, on the sixth day of October, 1936, of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-Six and of our Independence the One Hundred and Sixty-First.

6172

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 73

vs.

E. G. SHINNER & COMPANY, INC.

Appeal from the District Court of the United States for the Eastern District of Wisconsin

And on, to wit, the 10th day of February, 1937, there was filed in the office of the Clerk of this court a stipulation and order dated January 28, 1937, which said stipulation and order are in the words and figures following, to wit:

"IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

6172

"E. G. SHINNER & COMPANY, INC., Plaintiff,

vs.

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 73, Defendants

"It is Hereby Stipulated and Agreed, subject to the consent of the Judge of the United States District Court for the Eastern District of Wisconsin, and of the Circuit Court of Appeals for the Seventh Circuit, that the entire transcript of record in the former appeal taken in this cause entitled: 'Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Appellants, vs. E. G. Shinner & Company, Inc., Appellee,' No. 5551, (82 Fed. Rep. (2nd) 69) may be made a part of

[fol. 23] the transcript of record on this appeal without reprinting the same.

"Dated January 18, 1937.

"W. L. Gold and Ray T. McCann, Attorneys for Complainant and Appellee. A. W. Richter, Attorneys for Defendants and Appellants.

"Upon reading and filing the foregoing stipulation,

"It is ordered that the entire transcript of record in the former appeal taken in this cause entitled: 'Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Appellants, vs. E. G. Shinner & Company, Inc., Appellee', No. 5551, be and the same is hereby made a part of the transcript of record on this appeal without reprinting the same.

"Dated January 28, 1937.

"By the Court.

"Evan A. Evans, Judge of the United States Circuit Court of Appeals, for the Seventh Circuit.

"Endorsed: Filed Feb. 10, 1937. Frederick G. Campbell, Clerk."

And on the same day, to wit, the 10th day of February, 1937, there was filed in the office of the Clerk of this Court an appearance of counsel for appellee, which said appearance is in the words and figures following, to wit:

"In the United States Circuit Court of Appeals for the Seventh Circuit

6172

"E. G. Shinner & Company, Inc., Plaintiff and Appellee,

vs.

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, the Names of the Members Thereof Being Unknown to This Plaintiff, Defendants and Appellants

[fol. 24] "To Honorable Frederick G. Campbell, Clerk of United States Circuit Court of Appeals, for the Seventh Circuit:

"Please enter our appearance as counsel for the appellee, E. G. Shinner & Company, Inc., in the above entitled action.

"Dated February 6, 1937.

"W. L. Gold. Ray T. McCann.

"Service of notice of appearance admitted this 6th day of February, 1937.

"A. W. Richter, by E. Rubin, Attorney for Defendants and Appellants.

"Endorsed: Filed Feb. 10, 1937. Frederick G. Campbell, Clerk."

And afterwards, to wit, on the 12th day of February, 1937, there was filed in the office of the Clerk of this Court an appearance of counsel for appellants, which said appearance is in the words and figures following, to wit:

"UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1936

"No. 6172

"EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO. 73

vs.

E. G. SHINNER & COMPANY, INC.

"The Clerk will enter my appearance as counsel for the Appellants.

"A. W. Richter, 510 Caswell Block, Milwaukee, Wisconsin.

"Endorsed: Filed Feb. 12, 1937. Frederick G. Campbell, Clerk."

And afterwards, to wit, on the 21st day of April, 1937, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Wednesday, April 21, 1937.

Court met pursuant to adjournment.

Before Hon. William M. Sparks, Circuit Judge; Hon. J. Earl Major, Circuit Judge; Hon. Walter C. Lindley, District Judge

[fol. 25] 6172

EDWARD LAUF et al.

vs.

E. G. SHINNER & COMPANY, INC.

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Now this day come the parties by their counsel, and this cause comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. A. W. Richter, counsel for appellants, and by Mr. W. L. Gold, counsel for appellee, and the Court having heard the same takes this matter under advisement.

And afterwards, to wit, on the 13th day of May, 1937, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1936, APRIL SESSION, 1937

No. 6172

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO. 73, Appellants,

vs.

E. G. SHINNER & COMPANY, INC., Appellee

Appeal from the District Court of the United States for the Eastern District of Wisconsin

May 13, 1937

Before Sparks and Major, Circuit Judges, and Lindley, District Judge

SPARKS, Circuit Judge:

This appeal is taken from a decree permanently enjoining appellants from picketing appellee's places of business;

from seeking in any manner to coerce appellee to discharge any of its employees who do not belong to appellant union, or to compel its employees to become members of the union and to accept it as their bargaining agent and representative; and from advertising that appellee is unfair to organized labor or molesting or persuading its customers or prospective customers to cease patronizing it.

We are here asked to review the same facts and law as were presented to us for review on appeal from a decree of temporary injunction in Lauf v. Shinner and Co., 82 F. (2d) 68. It was there shown that although no controversy existed between appellee and its employees, none of whom belonged to appellants' union, the latter sought to compel appellee to require of its employees that they join the union as a condition of their continued employment. We held on the authority of United Electric Coal Co. v. Rice, 80 F. (2d) 1, that the facts there present presented no labor dispute, hence the Norris-LaGuardia Act was no bar to the right of the court to issue the temporary injunction, and under those facts there was no error in the issuance of such injunction. See also Scavenger Service Corp. v. Courtney, 85 F. (2d) 825; Newton v. La-Clede Steel Co., 80 F. (2d) 636.

Appellants state that the issues here involved are practically identical with those of the former case, and challenge the correctness of this court's decision in that case. That decision was based on our interpretation of the Norris-LaGuardia Act, and our construction of the statute has become the "law of the case," not to be changed unless it is clearly erroneous and unsound. Zurich General Ins. Co. v. O'Keefe, 64 F. (2d) 768; International Brotherhood v. Western Union, 46 F. (2d) 736; Radio Corp. v. DeForest, 47 F. (2d) 606. We are not convinced that our holding in the former case was in error, hence cannot disturb the decree of the District Court based on that decision.

Decree affirmed.

Endorsed: Filed May 13, 1937. Frederick G. Campbell, Clerk.

[fol. 26] And on the same day, to wit, the 13th day of May, 1937, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Thursday, May 13, 1937.

Court met pursuant to adjournment.

Before. Hon. William M. Sparks, Circuit Judge; Hon. J. Earl Major, Circuit Judge; Hon. Walter C. Lindley, District Judge

6172

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO. 73

vs.

E. G. SHINNER & COMPANY, INC.

Appeal from the District Court of the United States for the Eastern District of Wisconsin

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Wisconsin, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause appealed from be and the same is hereby affirmed with costs.

[fol. 27] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages, numbered from 22 to 26, inclusive, contain a true copy of the proceedings had and papers filed (excepting the briefs of counsel) in the case of Edward Lauf et al. vs. E. G. Shin-

ner & Company, Inc., No. 6172, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 24th day of May, A. D. 1937.

Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal United States Circuit Court of Appeals, Seventh Circuit.)

(551)

[fol. 1] [Placita omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

In Equity. No. —

E. G. SHINNER & COMPANY, INC., Complainant,

vs.

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, Local Number 73, the Names of the Members Thereof Being Unknown to This Plaintiff, Defendants

Civil Docket

BILL OF COMPLAINT—Filed April 11, 1935

To the Judge of the District Court of the United States for the Eastern District of Wisconsin:

E. G. Skinner & Company, Inc., a corporation being or-
[fol. 2] ganized and existing under the laws of the state of Delaware, with its principal place of business and having its residence in Wilmington, in the state of Delaware, and a citizen of said state of Delaware, alleges as its bill of complaint against the defendants, and each of them:

1. The complainant, E. G. Skinner & Company, Inc., now is and was at all times herein mentioned and for several years last past has been a corporation duly organized and existing under and pursuant to the laws of the state of Delaware and located and having its office and principal place of business in the city of Wilmington, in said state of Delaware, and a citizen of said state, and having its residence in said state, and at all times hereinafter mentioned was and now is the owner and operator of five meat markets in the city of Milwaukee, Wisconsin, which said meat markets are situated as follows:

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the city of Milwaukee, county of Milwaukee, and in the Eastern District of Wisconsin.

2. That the matter in controversy in this cause exceeds, exclusive of interest and costs, the sum and exceeds the value of $3,000.

3. That the defendant, Edward Lauf, on information and belief, is a citizen of the state of Wisconsin, and has his residence in said state, to-wit: in the city of Milwaukee, Wisconsin, the exact address being to your complainant unknown, and, on information and belief, that said Edward Lauf is the business manager of the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73. That the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, is an association of individuals, each of whom is a citizen of the state of Wisconsin, and each of whom is a resident of the state of Wisconsin.

4. That this complainant has at all times hereinafter mentioned had in its employ over thirty persons who are employed in the said business of conducting the meat markets of the complainant hereinabove enumerated, and for many years last past the relations between the complainant and its employees has been harmonious and mutually [fol. 3] satisfactory and peaceful, and complainant has paid its employees higher wages than those received by members of the defendant Union employed in other markets in Milwaukee. This complainant is informed and verily believes, none of its said employees are members of the defendant labor union, and all of said employees have rejected the repeated solicitations of the defendants to become members of said labor union. That this complainant has at all times permitted and is now willing to permit its employees to join the said defendant labor union, but that all of said employees of the complainant on being informed by this complainant that they were free to join said labor union if they so desired, declined and refused, as this complainant is informed and verily believes, to join the defendant labor union or to permit it to act as their representative or agent, and that said defendant labor union is not the union chosen by any of the said employees of the complainant to represent them in negotiating or bargaining with this complainant.

5. That notwithstanding the premises, and in violation of law, and particularly in violation of section 268.18, Wis. Stats. of 1933, the defendants have made demands upon this complainant that it enter into a contract with the said defendant labor union wherein and whereby the complainant would employ only members of said labor union, and would agree not to negotiate with any but the duly elected officers of said defendant labor union and would not make a contract with any one not affiliated with said defendant labor union; and in violation of the rights of this complainant and of the employees of this complainant, said defendants, and each of them, because of the refusal of the employees of this complainant to join said defendant labor union and accept it as their representative, have conspired, concerted and confederated together for the unlawful purpose of coercing this complainant to force its said employees, contrary to the wishes of said employees, to join said defendant labor union and to accept it as their bargaining agent and representative and of injuring and destroying the said business of complainant at said markets in the event complainant refused to yield to such coercion. In pursuance of such conspiracy, commencing on April 6, 1935, and continuously thereafter, defendants caused persons unknown to complainant and none of whom were or are employees of the complainant, to unlawfully parade and picket before said meat markets of this complainant, during business hours, bearing false and misleading signs, placards and [fol. 4] banners; and, upon information and belief, have caused such pickets to create noisy disturbances, to jostle and crowd the customers of the complainant and to obstruct the entrances to complainant's said markets, to prevent customers from examining the meats displayed in the windows of said markets, to call customers entering said markets vile and opprobrious names, to threaten said customers, to unlawfully accost, annoy and molest prospective customers of the complainant's said markets and to falsely say and represent to such prospective customers that the complainant treats its employees unfairly in the matter of representation by labor union, that the complainant pays its employees starvation wages, that the complainant is unfair to organized labor; each and every of such representations and similar statements made by said pickets being false and untrue. All of which acts are done by the said de-

fendants in pursuance of the conspiracy aforesaid, and are designed to and have the effect of preventing customers and prospective customers from patronizing the complainant's said markets.

6. That the defendants threaten to continue said unlawful acts for an indefinite time to come, and that, unless said unlawful acts are enjoined and the nuisance created thereby abated, complainant will suffer irreparable injury to its business and the customers and prospective customers of complainant will be restrained and intimidated from patronizing the markets of this complainant. That complainant has no adequate remedy at law.

Wherefore the complainant prays that the defendants be restrained and enjoined by injunction, temporary and permanent, from seeking in any manner to coerce this complainant to discharge out of its employ any employees of this complainant for the reason that said employees do not choose to join the defendant labor union, or to coerce this complainant to compel its said employees to become members of or accept the defendant union as the bargaining agent and representative of said employees; and that the said defendants and all of them and all persons acting in cooperation with them be enjoined and restrained from in any wise picketing the premises of this complainant or from representing or stating that this complainant is unfair in its dealings with said employees and with the defendants, or from annoying, molesting or soliciting any customers or prospective customers of this complainant to cease patron-
[fol. 5] izing this complainant and for such other relief as may be just and equitable in the premises.

E. G. Shinner & Company, Inc., by Archie H. Russell, Vice-President. W. L. Gold and Ray T. McCann, Solicitors for Complainant.

Duly sworn to by Archie H. Russell. Jurat omitted in printing.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUBPŒNA—Issued April 11, 1935

The President of the United States of America to Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, the names of the members thereof being unknown to plaintiff, Greeting:

You Are Hereby Commanded that all excuses and delays [fol. 6] set aside you be and appear within twenty days after the service of this subpœna at the Clerk's office of the United States District Court for the East. Dist. of Wisconsin, at Milwaukee, Wis., to answer unto the bill of complaint of E. G. Shinner & Company, Inc., in said Court exhibited against you. Hereof you are not to fair at your peril, and have you then and there this writ.

Witness the Honorable Ferdinand A. Geiger, United States District Judge at Milwaukee, Wis., this 11th day of April A. D. 1935.

(Signed) B. H. Westfahl, Clerk. (L. S.)

Memorandum

The Defendants in this case are required to file their answers or other defenses in the Clerk's office of said Court, on or before the twentieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken pro confesso.

Marshal's Return

Return on Service of Writ

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I hereby certify and return, that on the 11th day of April, 1935, I received the within Writ and served on Edward Lauf by delivering to and leaving Edward Lauf personally a true copy thereof, together with a Bill of Complaint Served on Amalgamated Meat Cutters and Butchers Workmen of North America Local Number 73 by delivering to and leaving with Edward Lauf Business Agent for said Union, personally, a true copy thereof, together with a Bill of Com-

plaint on this 11th day of April, A. D. 1935 at Milwaukee, Wis.

A. J. Lukaszewicz, United States Marshal, by (Sgd.) Roman J. Kozminski, Deputy United States Marshal.

Marshal's Fees:

Travel	$.48
Service	4.00
	$4.48

(Endorsed:) United States District Court. * * * (Caption—4593) * * * Subpœna in Equity. Filed Apr. 11 1935. B. H. Westfahl, Clerk.

[fol. 7] IN UNITED STATES DISTRICT COURT

NOTICE OF MOTION—Filed April 11, 1935

To Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, Defendants:

You Will Please Take Notice that on the 16th day of April, 1935, at 10:00 o'clock A. M., upon the bill of complaint now on file in the above entitled action, the complainant will move the court above named for a temporary injunction restraining you, the said defendants, and each of you, from in any wise picketing or causing to be picketed the premises of the complainant herein at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the city of Milwaukee, Wisconsin, and further restraining and enjoining you, the said defendants, and each of you, from advertising, stating or pretending or causing to be advertised, state- or pretended that the complainant is in any wise unfair to you the said defendants, or either of you, and further enjoining and restraining you, the said defendants,

and each of you from annoying, molesting or accosting, or soliciting or persuading any customers or prospective customers of the complainant from patronizing it at its said meat markets at the addresses aforesaid.

You Will Further Take Notice that the hearing on this motion will be upon oral evidence to be given in court at 10:00 o'clock A. M. of the day aforesaid, in the District Court Room in the Federal Building in the city of Milwaukee, at which time you, the said defendants, may appear and offer evidence and cross-examine the witnesses of the complainant herein.

E. G. Shinner & Company, Inc., by W. S. Gold, Its Solicitor.

Dated April 11, 1935.

[File endorsement omitted.]

[fol. 8] IN UNITED STATES DISTRICT COURT

NOTICE OF ADJOURNMENT—Filed April 16, 1935

To Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, Defendants:

You Will Please Take Notice that the motion of the complainant for an injunction pendente lite in the above entitled action, which said motion is dated April 11, 1935 and was served upon you on April 11, 1935, and is returnable before the court above named on April 16, 1935 at 10:00 o'clock A. M., has been adjourned by the court above named and will come on for hearing upon oral evidence to be given in said court at 10:00 o'clock A. M. on April 17, 1935 in the District Court Room in the Federal Building in the city of Milwaukee, at which time you, the said defendants, may appear and offer evidence and cross-examine the witnesses of the complainant herein.

Dated at Milwaukee, Wisconsin, this 13th day of April, 1935.

E. G. Shinner & Company, Inc., Complainant, W. L. Gold, by per W. G. Sullivan, Its Solicitor.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER AND CROSS-COMPLAINT—Filed April 19, 1935

The defendants by Joseph A. Padway, their attorney, in answer to the bill of complaint in the above entitled matter, admit, deny and allege as follows:

Admit paragraph one of the bill of complaint.

[fol. 9] Admit paragraph two of the bill of complaint.

Admit paragraph three of the bill of complaint.

Admit that the complainant conducts the business described in paragraph four of the bill of complaint, but deny that the past relations between the complainant and its employees have been harmonious and satisfactory, and deny that the complainant has paid its employees higher wages than those received by the members of the defendant union employed in other markets in Milwaukee, having regard for the hours worked by the employees of the complainant. In that regard defendants allege that the employees of the complainant have worked longer hours than those prescribed by the defendant union and longer hours than that prescribed by the Code of Fair Competition for the Retail Meat Trade, hereinafter referred to.

Defendants deny that none of the employees of the complainant are members of defendant labor union and in that connection allege that several of the employees of the complainant are members of the defendant union, and in that connection allege that the complainant upon discovering or learning that an employee was a member of the defendant union sought to discharge said employee by direct dismissal or by creating circumstances compelling the employee to leave the employ of the complainant.

Defendants deny that the employees of the complainant have rejected, repeated solicitations of the defendants to become members of the defendant labor union, and on the contrary allege that several of the employees of the complainant signified their intention of becoming members of the defendant labor union, and did become members of said labor union, but the complainant upon learning that said employees were members of the defendant labor union or intended to join, set in motion a so-called "company union" known as "Shinner Milwaukee Employees' Association", and induced its employees to join said association.

That said association was organized and created at the instance and promotion of the complainant in violation of Section 7 (a) of the National Industrial Recovery Act, and in violation of Chapter 268.18 to 268.300 inclusive of the laws of the State of Wisconsin; that said association was organized by the complainant with the express purpose of interfering with the rights of its employees to organize and bargain collectively through representatives of their own choosing, and in the promotion of said association the com- [fol. 10] plainant sought to interfere, and did interfere, with its employees in the designation of representatives for the purpose of collective bargaining, and sought to interfere and did interfere with the self-organization of its employees, all in violation of Section 7 (a) of the National Industrial Recovery Act" and of Chapter 268.18 of the Wisconsin Statutes.

Defendants deny that the complainant had at all times permitted, and is now willing, to permit its employees to join said defendant labor union, but on the contrary the complainant has interfered with said employees and restrained their will and exercise of free choice in joining the defendant labor union.

In answer to paragraph five the officers of the defendant labor union did inform the complainant that several of its workers had joined the defendant union and that others wished to join; that the officers of the defendant labor union informed the complainant that it had an agreement with other meat dealers and that it desired the complainant to enter into an agreement with the union for the purpose of regulating hours and wages; that the complainant refused to enter into such an agreement and refused to grant to its employees the terms and conditions as set forth in said agreement; that the defendant union likewise requested that the complainant comply with the hours prescribed in the Code of Fair Competition for the Retail Meat Trade; that the complainant has failed and refused to comply with said code and has employed its workers for hours longer than that prescribed in the code,

That said code is known as Code No. 540 "The Code of Fair Competition for the Retail Meat Trade" approved by the President of the United States, December 1, 1934, and was promulgated by the President of the United States by virtue of the powers vested in him by the Congress of the

United States through the National Industrial Recovery Act afore-referred to.

That the complainant is subject to said code, but has violated the provisions thereof by working its employees for periods of time and for hours longer than that permitted or prescribed by the code; that there is a labor dispute and controversy between the complainant and defendant union as defined in the United States Code, Title 29, in the act known as the "Norris-LaGuardia Act"; that such dispute involves terms and conditions of employment as defined in said Norris-LaGuardia Act, and is a dispute between [fol. 11] parties described in said act and parties engaged in the same craft, trade and industry.

That the complainant has been guilty of inequitable conduct, by virtue of the violations of Section 7 (a) of the National Industrial Recovery Act afore-referred to, and by virtue of violations of Chapter 268.18 of the laws of the State of Wisconsin, and by virtue of its violations of the Code of Fair Competition for the Retail Meat Trade Industry.

Further answering paragraph five defendants deny the specific acts of illegal and unlawful conduct referred to therein; deny that they have committed any unlawful act; deny that there is a conspiracy to commit unlawful acts, and on the contrary allege that they have picketed the premises of the complainant in small numbers, and have done so peacefully, and that the signs carried by the defendants are lawful and within the provisions of the Norris-LaGuardia Act and Sections 268.18 to 268.30 of the Wisconsin Statutes; that the conduct of the defendants, its agents and members of the defendant union have been in all respects peaceful, law-abiding, and without any breach of law or illegal interference with the rights of the complainant.

Defendants deny the allegations of paragraph six and incorporate herein the allegations of the preceding paragraph in answer thereto.

Wherefore the defendants pray that the relief prayed for by the complainant be denied to it, and that the bill of complaint be dismissed.

As and for a cross-complaint against the complainant, defendants allege:

1. Defendants repeat all of the allegations of the foregoing answer, incorporates the same herein and makes the same a part hereof as though specifically set forth.

2. Defendants allege that the officers and members of the defendant union have peacefully picketed and peacefully patrolled in small numbers in front of the premises described in the bill of complaint.

3. That these defendants have committed no illegal acts and their conduct has been peaceful and lawful.

4. That the complainant, its officers, agents and employees, in order to deny the defendants their rights as accorded them by law, in order to stir up strife, trouble and breaches of peace, have annoyed, abused and insulted the officers, agents and members of the defendant union and have called the members of the defendant union and the persons patrol- [fol. 12] ling the premises of the complainant vile and indecent names, hurled insulting epithets at them and otherwise abused them.

5. Defendants pray that the complainant, its officers, agents, servants, and employees be restrained from interfering with the defendants, its agents and members in the exercise of their lawful rights, and be restrained from using abusive and opprobrious language or epithets towards them, and for such other, further, relief as under the circumstances may be just and equitable.

Wherefore defendants pray that the bill of complaint be dismissed and that it have affirmative injunctive relief against the complainant as prayed for herein.

Joseph A. Padway, Attorney for the Defendants.

Duly sworn to by Edward Lauf. Jurat omitted in printing.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

Statement of Evidence—Filed July 5, 1935

The following is a statement of evidence produced at the hearing of this case before the Honorable Ferdinand A. Geiger, on the 19th day of April, 1935, insofar as the evidence is essential to the decision of the questions presented by this appeal.

[fol. 13] Appearances:

Messrs. Gold & McCann, represented by Walter Gold, Esq., and Ray T. McCann, Esq., appearing for the Plaintiff; Joseph A. Padway, Esq., appearing for the defendants.

The plaintiff thereupon to maintain the issues on its behalf to be maintained, offered the following evidence and testimony, to-wit:

E. G. SHINNER, a witness on behalf of complainant, testified:

Direct examination:

My name is E. G. Shinner. I am president of the Shinner Company, complainant in this case. The company operates 5 meat markets in Milwaukee. The company has 35 regular employees in Milwaukee. I have not had any discussion or talk with those men in reference to joining unions. The men have a company union. The men organized the company union. They have representatives.

I have never told any of the men, directly or indirectly, that they had no right to join the defendant union or what union they should join. I have no objection to the men joining the defendant union if they so desire.

If the men have made any complaints to me, directly or indirectly, in reference to wages, they have been satisfied. No complaint has been made within the last 6 months. There is no dispute at the present time between me and any of my men in reference to wages or in reference to hours of labor or conditions of labor. There is no dispute between me and any of my men at the present time with reference to who shall represent them. There is no dispute of any kind between me and any of my men at the present time. None of the representatives of the defendant ever approached me personally, except to mail me a proposed contract. None of my employees at the present time are picketing.

Cross-examination:

I suppose all my employees are directly engaged in operating the markets. I am familiar with the Code of Fair Competition for the retail meat trade in a general way. I [fol. 14] wouldn't say we were operating under the Code. It is being ignored, generally ignored throughout the

country. The President did prescribe a Code for the retail meat trade December 21, 1934. It was never made effective. I know that the Code prescribes wages and hours. It is true that our concern is not complying with the Code in the matter of hours. The final regulations were never set up—for the meat trade. The Code is wholly ineffective, as it was finally revised last fall. There is no machinery in existence to administer the meat trade Code so far as I know. We do employ some of our employees at work in excess of 48 hours in any one week. I do not know if we employ them in excess of 10 hours in any 24-hour period. We pay one and a half times the hourly rate for work over 10 hours a day, and 48 hours a week. We have given out to the world that we couldn't operate under the Code as originally promulgated. At the present time we have no machinery in effect to administer any Code at all. There are no officers or nobody, in a position to administer the Meat Trade Code, at the present time. I know the number of hours originally provided for, and I know we pay our men over-time and pay them about double the Code rate. We employ our men nine hours. The Code originally provided for eight. We give them over-time for extra hours. We do employ them now for a longer period than prescribed in the Code. No complaints were lodged with the local Compliance Board against my concern. If any were lodged, they would probably come to me. A Mr. Berliner of the local Compliance Board asked for various types of information, which I refused to furnish to him, stating that I did not consider myself subject to the Code, and therefore would not supply the information.

Redirect examination:

Our company has never subscribed to any Code. I never voluntarily assented to any Code.

Recross-examination:

I signed the President's Re-Employment Agreement when it first came out. I revoked it by returning the Blue Eagle January 1, 1934. The published statements of the President gave me the privilege of discontinuing the agreement and returning the Blue Eagle. If I remember, the President's [fol. 15] statement at the time, it was to the effect anyone who did not want to proceed under the reemployment agreement could discontinue it and return the Blue Eagle. As to

whether or not when that statement was made, that was made in connection with the promulgation of the Code, and the President's re-employment agreement expired 10 days after readoption of the Code, I could not say. I don't recall the procedure I went through when I returned the Blue Eagle. It was a voluntary surrender. It would be my idea that I surrendered it before a Code was adopted. I have not a copy of the original agreement with me. I assume that the agreement was one of several million sent around the country known as the President's Re-employment Agreement.

(Printed copy of President's Re-Employment Agreement received in evidence and marked "Defendant's Exhibit 'A' ".)

I surrendered it January, 1934, over a year ago. I signed it in August, 1933, when the President mailed it out about that time.

ARCHIE H. RUSSELL, a witness called on behalf of the complainant, testified:

Direct examination:

I am vice-president of the complainant. I have been in the city pretty near all of the time since April 6, 1935. I have visited the various stores. I have observed the picketing. It was mostly walking up and down in single file, and telling the customers not to patronize our stores, they were unfair to Union labor, and all that stuff, and some of the stores were quite noisy and some fairly quiet. I have had occasion to call the local police to maintain order 3 times. The last time was yesterday. They walk in single file, in a circle, to the curb and over the entrance of the door, and down to the front of the window, in some spots.

Q. What did you observe in reference to delaying each customer as he was about to enter?

A. He was usually hesitate to trifle them, trying to block the doorway.

I have not seen any physical contact between the pickets and the prospective customers. None of the plaintiff's employees have been on the picket line. There has been no dis- [fol. 16] pute between the plaintiff and its employees in re-

ference to wages, working conditions, or hours of labor. They have made no complaints to me.

(Produces photographs of picketing which are marked Plaintiff's Exhibits 1, 2 and 3.)

Mr. Joyce, a representatice of the defendant union, called me at my office in Chicago and said he was Mr. Joyce of the American Federation of Labor, and said, "We are in Milwaukee, and want you fellows to join our Union up there. They tell me up there you are the man I must see, to get a contract signed for Shinner & Company with the Butchers Union up there". I told him I could not sign any contract with him, that our men had their own association and were perfectly well satisfied, and didn't want to belong to any other Union. He said, "Well, I am going there tonight, and if you don't join, I will declare war on you." I said, "There is nothing I can do about it." He said, "All right, the war is on, and may the best man win", and he hung up. That was about March 18th. Actual picketing started April 6th. The photographs fairly represent the picketing as it existed at different times.

(Photographs received in evidence.)

I have no objection to employees joining the defendant Union if they so desire. I have not instructed them not to join a Union or talked to them at all about what Union they should join.

Q. Did you have any part in the forming of, or suggest that they form a company union, which they have?

A. No, sir.

Q. That Union was formed when?

A. I would say about last August.

Cross-examination:

I do not live in Milwaukee. I had a conversation with Mr. Joyce in Chicago. He called me on the telephone. I do not know him.

Q. You knew your men had joined the A. F. of L., some of them, in Milwaukee, some months before?

A. I didn't know what Union they belonged to.

I come to Milwaukee every week.

Q. Didn't Mr. Drop tell you he had a conference with the business agents?

A. No, he didn't say so, he had any conference, but he said Mr. Lauf called him up last week.

[fol. 17] Q. Did he tell you Mr. Joyce and others talked to him about Unionization?

A. No.

Mr. Drop is our buyer, kind of superintendent. I understand Mr. Drop had a conference with the Union men the first day picketing started but Mr. Drop didn't tell me about it. I understood there was a meeting.

I wasn't informed what complaints or demands the Union made at that time. I know Tony Koski but I didn't know he had joined the A. F. of L. organization. He is an employee of the company. I know Ben J. Kosnicki. He is an employee of the company. I did not know he joined the A. F. of L. organization. I do not know if we had in our employ a man by the name of Woodrow Bushman. I don't know Wendeling. I do know Joe Heller. He works for the company part time. Years ago he worked full time. I do not know he was a member of the A. F. of L. Union. I know Frank and Steve Szablewski. They both work for us. I knew Frank was a member of the A. F. of L. Union but I didn't know Steve was. I do not know if Ludwig Szoboda is a member of the union. I did not know nor was it reported to me commencing May, 1934, the A. F. of L. were taking employees of our company into its local.

I don't recall the date when the company Union was formed. I believe it was some time last August. Heller was not discharged because the company discovered he was an A. F. of L. Union member. We have never had a company Union in our organization before this. We have done business in Milwaukee 15 or 16 years. I wouldn't say it was a fact the company union was set in motion as a sort of counter-move to the A. F. of L. organization in our stores. It was on the request of the boys it was formed. The boys came and talked to me about it and asked me about it. They said they didn't want to join the A. F. of L. Union, and to have an organization of their own. They asked us if we would help them with the problems they had in forming it, and I told them I would. I gave them any help they asked. They wanted to know how they should go about it,

the various thing-. I helped them start it and they finished it. We helped form the company union, and the boys could do what they wanted. The boys wanted a skeleton framed up, so they would have something to work on. I got our form for the company union from various readings in newspapers and things.

The photograph marked Exhibit #3 shows pickets to be [fol. 18] walking and only 2 pickets. The sign they carry reads "This Market Unfair to Meat Cutters Union Local 73". That is all there is on the sign. The people there are not employees of any kind. Exhibit 2 shows the same thing. The photograph, Exhibit 1, shows a picket in the act of walking past the entrance of our store.

I never did learn that our employees had joined the A. F. of L. Union. I only spoke once to an official of the Union. It was about a month ago when Mr. Joyce called me. I was not informed by officials of the union that employees of our store joined the union. Mr. Joyce did not tell me the reason he wanted our men to join the Union. He did not say we were working our men longer hours than prescribed by the union. Mr. Joyce asked me when I was going to join—I was going to sign. He did not tell me the agreement provided for certain rates of wages and certain limitations or hours. All he was interested in was getting our signature. Our Chicago office received a copy of this agreement. It was received quite a long time ago, last year some time, considerably before the picketing commenced. It was sent to me by Mr. Scholl. I don't remember what he said when he sent it.

(Mr. McCann hands Mr. Padway a letter dated October 15, 1934, bearing the name "Amalgamated Meat Cutters and Butchers Workmen of N. A., General Office, 116 North LaSalle Street, Chicago, Local Union 73, and it is addressed to the E. G. Shinners Corporation, 1763 West 64th Street, Chicago, Illinois.)

The envelope contained the letter and the agreement. The agreement contains a number of articles dealing with wages to be paid, and hours of employment. One of the clauses is "B": "The basic working week for journeymen employees and apprentices shall be 48 hours, and managers and executives are exempt. Not more than ten hours in any one day, and not more than six days per week, but

in no event are the hours of the week to exceed 48 hours." I understood the Union was sending the agreement to us with a request that we sign it, become a Union shop, and agree to terms and conditions promulgated by the Unions for other shops. Among other things, in the agreement, is apprentice clauses, clauses pertaining to managers and executives, and arbitration clauses. I notice that there is one clause with respect to the kind of shop, preferential shop. It practically binds us to take nothing but men they supply us with. We can go to them, secure them from them. We rejected this contract. We did not have any one here notified that we would not accept that contract. We just [fol. 19] did not pay any attention to it. Mr. Drop hadn't any authority to sign contracts in Milwaukee. He told me Mr. Schilling called him up at one time and wanted to know when we were going to sign the contract. He told Mr. Schilling that he was busy and not to bother him. Mr. Schilling and Drop had that conversation some time last year.

Mr. Radway: I offer this in connection with the witness' testimony.

(Document marked Defendant's Exhibit "B".)

We have never signed an agreement, or otherwise consented to the terms set forth in that agreement with the Milwaukee Union or with the International of the Milwaukee Union or Chicago. The Union did not commence picketing until April 6.

The union representatives did not visit Mr. Drop very often. There were only two instances, once when Mr. Schilling called him and one when Mr. Lauf called him a few weeks ago. Mr. Joyce called me. I don't know what capacity Mr. Joyce was. The conversation by phone pertained to having us sign the agreement. I refused to do it.

The men we employ in our business are in the retail meat trade business, and they are all good butchers. Our men have been eligible to membership in the union.

Redirect examination:

Exhibit 4 shows pickets at the Vliet Street store. On one occasion I heard the pickets at least a half a block away from the Mitchell Street store. Not all the pickets carry signs.

Recross-examination:

Mr. Drop informed me about last week that Mr. Lauf had called him. Mr. Drop told me that he said to Mr. Lauf, "Don't bother me, I am too busy." Mr. Drop has no authority to sign a contract.

Q. Didn't Mr. Drop tell you he said to Mr. Lauf, "There is no use of your coming; I won't talk to you on that subject."

A. He probably did. Mr. Lauf called up last week and did not leave any telephone call, and was looking for me, and I never heard from him any more.

[fol. 20] Anna Miller, a witness on behalf of complainant, testified:

Direct examination:

My name is Anna Miller. I am a housewife. I live at 1669 South 16th Street. I have traded at the Shinner Markets for 6 or 7 years. Last Monday I attempted to enter the market on Mitchell Street to buy meats. Two men were parading in front of the market. Before I go into the market I generally look at the windows. A picket who I don't know by name but would if I saw him came to me and said, "Don't go in that market; it is no good; don't buy there; if you want cheap meat, look for cheap meat, there is plenty of butcher shops on Mitchell Street. Don't patronize Shinners, because they are no good.". I said, "Mind your own business; if I want to trade her-, I will, and I don't ask you." He said, "Then you ought to be shot, if you go into that market." And I said, "I am going."

Q. Did you go?

A. Yes, I went. I always got courteous treatment there; why shouldn't I?

Cross-examination:

That was said while I was looking in the window. He was trying to prevent me from entering. He didn't put his hands on me. I wouldn't have dared him to put his hands on me. I said, "Mind your own business", and when

he saw I spoke to him and wasn't afraid he went back to the curb. I don't know what he would have done if he saw I was afraid.

Q. He did not stop you physically, from entering that store?

A. He tried to and walked up to me.

Q. He walked up to you while you were looking in the window, and talked to you?

A. What business did he have? I did not bother him.

He didn't have any business to talk to me. When he went up to me, he asked me not to go into the place and buy meats, and talked about Shinner's, and the men there; said I should have Union men to wait on me, and I don't want to go down Mitchell Street and have four or five of them talk to me. One, specially, with a gray overcoat, had the biggest mouth. He told me I should not buy meats [fol. 21] at Shinner's. That if I wanted to buy cheap meat, I should go somewhere else. I told him he should mind his own business; I was perfectly satisfied, and always got good service, and I was going to trade "here", and he said, "You should be shot for buying in a place like that, that does not belong to the Union." My husband is working for the American Paper Company as shipping clerk, and has very fine employees. I won't believe they are Union men.

Q. I don't either.

A. And I am glad of it.

Edward J. Wentz, a witness on behalf of complainant, testified:

Direct examination:

I live at 2362 North Hubbard Street. I am a maintenance man at Columbia Hospital. I traded at Shinner's Third Street market. A week ago last Saturday morning I was walking with a cane. I had an injury to my side. There were two woman and children just ahead of me window shopping; and being as I was unsteady on my feet with a crutch, as I got to enter the market about three feet from the door, one of the boys with a banner bumped me on the left shoulder. I went closer to the window, did not say any-

thing, and went inside the shop and inquired, "What's the trouble?" He said they started picketing out in front. I don't think the boys in the shop knew there were pickets out there.

Cross-examination:

It wasn't the sign that bumped me.

Q. How many pickets were there at the time?
A. I only saw one that bumped me.

There were other people going back and forth on the walk. The picket was walking around and was about three feet from the door when he bumped me. I did not say anything to him.

[fol. 22] GUSTAVE A. HAHN, a witness on behalf of complainant, testified:

Direct examination:

I live in Wauwatosa and as a coal salesman. I am a customer of the Shinner's North Avenue market. I go there almost every day. I have been molested by pickets almost every time I went there during the last week. They said to me that the Shinner's market is unfair to Union labor, and according to the President's declaration, if I trade there I would be a chiseler. They walk within a foot from the door. They walk almost directly in front of the display windows. At one time there were five, at one time four, and one day there were two. The tone of voice they use is very loud; you can hear it at least a half a block. One talks at a time in relays.

ANTHONY J. SOKOLOWSKI, a witness on behalf of complainant, testified:

Direct examination:

I am a butcher employed by the E. G. Shinner & Company at 1208 West Lincoln. I have worked for that company about five years and have been there every day for the last two weeks except my two half-days time off. I have seen the pickets. At times there are two, four, five and I have

seen as high as nine. I didn't hear much that they said, but at times I come out in front and hear them "Don't trade in there, they is plenty Union meat markets; let a real Union man wait on you; they pay starvation wages", and all that sort of thing. The wages in our shop vary. I know my own is $34.53 a week.

I am president of the Shinner Union. The association was formed about last August. At that time we were celebrating some an-iversary, the opening of the first store in Milwaukee. Mr. Shinner gave us a little dimner, and the boys were so satisfied that the idea sprang up there. I, for one, said we should have more gatherings like this, create a good fellowship club among the members of the Shinner Company. It was where the beginning came. I never asked Mr. Shinner or Mr. Russell about joining a union. Neither ever stated to me personally whether we should or could or [fol. 23] couldn't join a union, but Mr. Shinner at that luncheon gave a little talk, and during the talk he stated it was immaterial to him what we did; we should do what we think best for us. He has nothing against any Union, if we feel we want to belong to any Union, we should go ahead and do it. Personally, he does not care.

The employees are 100 per cent members of the employees Union. There is not dispute between the association and Shinner with reference to wages, hours of labor, or working conditions. The association elects its own bargaining representatives. All their employees are working; none is picketing.

Cross-examination:

I work nine hours a day. I am not a foreman. I am the back-room man who receives all goods coming in, cutting it for the entire day, and at rush time, helping out with the trade. I put in 57 and one-quarter hours per week. When the Code went into effect I was drawing $28.00 a week. The gathering at which Mr. Shinner was present was not for the purpose of discussing the formation of a company union. Mr. Russell spoke to me that afternoon and said he thought it would be a good idea to have a little lunch to celebrate the opening of the first store. The following day we had the lunch and Mr. Shinner was present. At that meeting the subject of Unionism was discussed by Mr. Shinner.

Q. He did not care if you belonged to the A. F. of L., or another union?

A. He didn't say about the A. F. of L., and did not care what Union we belonged to; it was entirely up to us to say what was best for us.

The discussion of Unions came about because about that time everybody was talking union, and the whole country was "union". The boys, between themselves, spoke at times about Unions of different kinds. I imagine he spoke because the rest of them did at that time. We never spoke of unions at the store. Outside I did. Up to the time we formed our union I didn't know what the other employees of the other stores were doing in the matter of joining unions. I wasn't the only organizer of the company union. The idea sprang up at that meeting, and we spoke to some boys on 3rd St. and they thought it was a good idea. At first we didn't have a union in our heads. We were after a good fellowship club. We didn't want to be termed a union at [fol. 24] that time. Later as there was so much union talk, everybody was belonging to one union or another, we finally gave in and called it a union. There really were no organizers. We all came in. Nobody could get credit for organizing it. Others felt the same way as I did about it. Later we had another luncheon. We asked the help of Mr. Russell to help us organize the union, as you call it now. We told him we didn't have the experience, and didn't know how to go about it, and we got his help.

We have a constitution and by-laws. Employees of the Shinner Company are not obliged to belong to the union. They don't have to if they don't want to. This constitution was given to us by Mr. Anderson. I don't know who he is. I don't know if he is an officer of the company. He is a Chicago man. He just came and helped us form it.

Q. Your constitution embodies all provisions of Section 7 (a), did you know that?

A. It was our intention to organize under Section 7 (a); there is also a membership clause.

We hold meetings every Tuesday in each month. The foremen attend these meetings only four times a year, where they have a Board Council Meeting. The representative of each store and their manager appears at the meeting. The man is representing the men working at that store. The

managers do not represent the men. The representative picked by the men working at the store, excluding the manager, who has no right to vote in the election, represent the men. Dues are 50c a month. There was no committee or group conferring with Mr. Russell on the constitution. It was all done where we were present, and all the employees were there at the time Mr. Russell was there and Mr. Shinner at the first meeting, at the first luncheon celebrating the opening of the first store in Milwaukee.

Q. At the time the constitution was adopted, or imposed, who were present?

A. Mr. Russell and Mr. Anderson.

Also the employees. A vote was taken on the adoption, Mr. Anderson and Mr. Russell were present. They did not vote. The foremen did not vote. They were present but not voting. The meeting was held the second last or last week in October of last year. The first meeting was in August and I believe we had one other meeting in that time. At the August meeting the discussion was merely to have a welfare organization, a goodfellowship club. The one in October developed into a collective bargaining agency.

[fol. 25] Q. Isn't it a fact Mr. Russell and Mr. Anderson suggested to form this organization, with the idea in mind of collective bargaining with the employer?

A. The first time we heard of collective bargaining was when we got the help of that from the by-laws.

We had the form; and the parts we wanted to, we could accept; and the parts we wanted to reject, we could. It was not known to me at the meeting that Mr. Russell or Mr. Anderson had received, several days before, a contract or agreement from the A. F. of L. Union, asking the company to yield to terms or consent to terms proposed by the Union of A. F. of L.

(Plaintiff then offered in evidence the provisions of the articles of the Shinner's Employee Association, so far as they relate to membership they read as follows: "All employees of E. O. Shinner & Company, Inc., Milwaukee, are eligible for membership. Neither the company nor any of its managers shall discriminate against any employee, because of his joining or failing to join this association, because of church, political or Union affiliations, nor shall

coercion be used either direct, or indirect, by any manager of the company, to secure participation in this plan."

Another section provides as follows: "Employees shall have the right to organize and bargain collectively to representatives of their own choosing, and shall be free from the interference, restraint or coercion" (Reading)).

I am not a member of Local 73. I don't join because I cannot see where I will better conditions for myself by joining it.

BENEDICT J. KOSNICKI, a witness on behalf of complainant, testified:

Direct examination:

I live at 2537A South 15th Street and am employed by the E. G. Shinner & Company. I am a member of the Shinner Association. I am not a member of the defendant Union. I had made application in the defendant union and paid a dollar at the time of the application. I didn't go through with it because there was some sort of a mix-up in the other union among the men and I thought it is all right to wait a while to see how it was going to pan out. As an employee of Shin-[fol. 26] ner's I have not been given instructions as to what Union to join. Drop or any of the superintendents have not given me instructions. We never spoke of unions among ourselves. The store is located on North Avenue. I have worked there since the store opened. None of our employees are out picketing. The pickets walk around with the signs and after a while we had one fellow who was saying, "We want a real union, and don't want a company union, because the company union does not secure a man a job; all it does is buy him beer. Mr. Shinner pays for the beer, and somebody has to pay for the beer, and the boys pay 25 cents a head." People go by and crowd up close to the window and from outside on the sidewalk it reaches over sometimes on Kroger's.

The Kroger store is on the west side of our store. I have been told the pickets keep their signs in the back room. I have seen an employee of Kroger's in the picket line. The pickets walk right up against the window, sometimes bumped with their elbow.

Q. Have you seen them edge along the customers, as they stop to look in the window?

A. They would go up close, and tell them not to shop. Last night a young man, he just about crow-ed on him—I don't know if he touched him, but I know his coat brushed him and crowded over as though he would like to bump him.

When a customer is about to enter the door the pickets yell and also as we are waiting on our customers. He would be outside yelling into the shop. When prospective customers stopped to look into the window the pickets yelled louder. I can hear them way in the back room. They picket through the day during business hours.

Cross-examination:

I signed an application to join the A. F. of L. Union. They had mass meetings; I went voluntarily. Speakers addressed the meeting and urged us to join the Union. I did not join but I signed an application in the hall and paid a dollar. I did not pay any dues. I paid the dollar more or less voluntarily. I can't remember if it was in August, 1934. Soon after, the Shinner Company here had a meeting, a celebration. At that meeting Mr. Shinner made a speech about the employees having the right to belong to any Union they wanted to. He praised us, more or less, and was proud of the business. I don't recall him saying anything about [fol. 27] unions. Every man was discussing more or less about unions. Everybody was talking union.

Q. It is a fact, other Shinner men joined the A. F. of L. Union, at the same meeting you joined?

A. I don't know.

Q. Did any of them tell you he was?

A. Just one.

His name is Harry Young. I was present when the constitution was adopted. I don't know who brought it or who explained it. Mr. Anderson was there and explained some parts of the constitution. I believe I joined the organization that night.

Q. When you went to the meeting that night, did you know you were going to a meeting that was to form an association, the purpose of which was to collectively bargain with the employer?

A. We had that impression; you mean the night when they brought the constitution and by-laws?

A. Yes. Did you know when you were going there, that the meeting was called for the purpose of creating an organization to collectively bargain?

A. Which night?

Q. It is the night of the constitution. Did you think you were going there merely to join a good fellowship club?

A. That I could not say truthfully, yes or no.

Q. Isn't it a fact that the first time you heard of collective bargaining, the setting up of an organization of collective bargaining was at that meeting where the constitution was raised?

A. We were talking about it some weeks before that. There was something said about it would be better, and we should get along better if we had more to say ourselves, instead of by violence. I imagine it is the idea I had.

Q. Who promoted that?

A. As far as that goes, it was just between us fellows.

There are five working in my shop. We talked it over. I did not know Mr. Russell and Anderson were going to be at the meeting that night. I did not stay for the entire meeting.

Q. Isn't it a fact, the reason you did not join or did not attend the meetings of the A. F. of L. was because you knew the managers did not want you to become a member of the A. F. of L.?

A. The managers said nothing of the sort. Nobody said anything of the sort about joining, or not joining. If I wanted to, I had a perfect right to join. At the time I felt [fol. 28] it was all right to have an organization of some sort. I went up to the meetings and it was the same meeting—and I thought, "Well, when we start talking about the other union, it was a better outfit."

I heard the union hours were 48 but I saw them often later than that. I believe the foremen were present at the meeting attended by Mr. Russell and Mr. Anderson.

Redirect examination:

At the meeting of the A. F. of L. I attended, the initiation dues were $3.00 at the time, and they said they would be maybe up to $25.00 and it would be a good idea to join. I don't remember the Shinner firm was mentioned at that meeting.

FRANK SZABLEWSKI, a witness on behalf of complainant, testified:

Direct examination:

I live at 2405 North Booth and am employed by E. G. Shinner. I have been employed there over three years at the Third Street store. I am a member of the Shinner Association since November. I was a member of Local 73 at one time but I am not any more. I was a member of Local 73 last November. I quit them because I was running around before I started with E. G. Shinner, and me and my wife talked it over, and she said, "Here you are working steady", and she says, "Why don't you stick? You have a good place and job, and get reasonable wages." So I rang up that night Schilling, and told him I am through with Local 73, and he was up that night and asked me to sign an affidavit, and I says, "No, I can't do that." I do not know what was in the affidavit. I wasn't home that night but my wife told me what he had. Neither Shinner nor Russell or any officer of the Company has ever told me I could not belong to any Union or I had to join any union. He says it is up to me, I can go where I want.

Cross-examination:

I happened to talk this over with my wife, "you have a good job now and you better stay there", and called up Mr. Schilling and told him I did not want to belong to Local 73, [fol. 29] because I did not want to walk the street; I walked them long enough.

I was a member of the A. F. of L. Union until November. I had paid dues for a number of months. November was a few weeks after the organization of the company union. Nobody said anything to the effect that the company did not want me to belong to both organizations. I called up Mr. Schilling and said I did not want to belong to 73 because I told him I had a good job there, and I would stick with them. I was not afraid it would hurt me with my good job with the company if I remained a member of 73.

Q. Why did you do that; what connection is there between your having a good job, and the telephone call to Mr. Schilling that you do not want to be a member?

A. I made up my mind I would stay with E. G. Shinner, and I dropped out of 73.

The union did not tell me not to stay with E. G. Shinner. I recall a visit I made to the home of Mr. Mansfield. He is a representative of the A. F. of L. Union. I remember complaining to him how long the hours were at Shinners. I told him that. I remember telling him I wished all men would join the A. F. of L. Union so that we could get shorter hours. Me and my wife were complaining about long hours. I didn't ask him why he doesn't get more of our men into the union. I said everybody has to do what they want. I did not say to Mr. Mansfield, "I am working altogether too long hours for the money I get." I told him, "I am working long hours." That is all I said. At one of the meetings he asked me if I would come to his house and at that time I told him about the hours of the Shinner employees.

Q. You said they were working long hours?
A. Not exactly, but I said, "We are working overtime."

I told E. G. Shinner Company that I was a member of the A. F. of L. I told that to Mr. Russell; I think it was in the first part of November or the last of October, something like that. It was soon after the organization of the company union. The first part of November I sent in my resignation to the A. F. of L. I didn't tell Mr. Russell I was going to quit the A. F. of L.

Q. Did you know any other men, members of the A. F. of L. Union, who work for Shinner's?
A. From the one store, particular store?
Q. That, or any other?
[fol. 30] A. Once upon a time we were all in Local 73; it was Local 64 first, and then 73.

I got the transfer from Local 64 to 73. 64 and 73 are both local Unions of this A. F. of L. Meat Trade Industry. I was transferred from 64 to 73. We were all affiliated with one of the Unions of the A. F. of L. in 1933, the first part of August. When the N. R. A. was passed, soon after that the Shinner employees went into the A. F. of L. Union; most of them did. I do not know when and why they dropped out. The foreman of the Shinner Company has not told me and other men working there that they don't

want us to join the A. F. of L. It is not a fact that I quit the A. F. of L. Union because I figured I could not hold my job if I remained a member of the A. F. of L. Nobody approached me about that. I was not a legally paid-up member to November. I was paid, I think to September. I was two or three months behind. I joined the A. F. of L. the first part of August, 1933.

Ole John Sadowski, a witness on behalf of complainant, testified:

The Court: If the plaintiff can make out a prima facie case, he has made it out.

Direct examination:

I am secretary of the Shinner Association.

Cross-examination:

Q. Have you ever been a member of the A. F. of L?
A. Yes, sir.
Q. When?
A. The last part of July.
Q. I mean, when did you become a member?
A. I was not a member. I paid $3.00 on the application blank.
Q. Did you quit or just how did you sever relations?
A. I went to a few meetings and simply dropped out.

We were all present at the time the constitution and by-laws were adopted, and Mr. Russell and Mr. Anderson were there. I didn't know who Mr. Anderson was at the time. [fol. 31] I didn't know before I came that the meeting was to take up the subject of collective bargaining. We all got together and adopted it. We all talked about it at one of our parties.

Q. Who brought it to the attention of the meeting, that it was to discuss collective bargaining?
A. We all got together, and we talked Union, and saw it wasn't doing anything, and we had meeting after meeting, and didn't get anywhere so we thought we would get together and organize an association and deal with them direct.

Nobody brought the constitution and by-laws. We all got together and talked things over.

Q. You don't mean to say it was drafted, sitting right there?

A. We went over and spoke to Mr. Russell about it.

Mr. Anderson helped us prepare it. We asked him to bring it prepared. To this day I don't know who he is.

It was thereupon stipulated that Mr. Anderson is Secretary and Auditor of the company. He has offices in Chicago.

Mr. McCann: We have a lot of other witnesses, purely cumulative.

April 19, 1935, 2:00 o'clock P. M.

All parties met pursuant to adjournment last above noted.

Mr. McCann: I offer in evidence the Wisconsin Statutes, Section 268.18, and 268.19 of the Wisconsin Statutes. 208 is part of the Code, and 268.18 declares the public policy of Wisconsin and the language is the same as the Declaration of Public Policy in the Norris-LaGuardia Act.

Mr. Padway: It also contains the language of Section 7(a) in 168.18. We will offer in connection with that, the Wisconsin Statutes, I don't know if it is necessary; I think the Court will take judicial notice of it.

The Court: Yes.

EDWARD LAUF, called as a witness on behalf of defendant, testified:

Direct examination:

I live at 8818 West Mitchell Street and I am Business Agent for Local Union 73, Meat Cutters. I commenced to act in that capacity January 1st. My Union has not declared a strike against the Shinner Company. Our Union [fol. 32] has established picketing and patrolling in front of the premises of the Shinner Company.

Our Union has a dispute with the company. Our dispute is that they were violating, as to hours and working conditions and so on; and the men have come to our meetings and complained about the conditions and hours they were working, and asked us what we can do for them there,

about it. Some of the Shinner employees have been members of our Union. I am not fully familiar with the record of the Union as to members' names and so on.

Frank Szalbewski, an employee of the company, was a member of our Union at that time. Steve Zurowski, an employee of the company, is a member. Ludwig Svoboda, an employee of the company, was also a member of our Union. I really don't know whether these employees are members of our Union now; they failed to pay dues up until—I don't know exactly. Our financial secretary has the full details. He is not here. I tried to get him here by phone but the stores are closed from 12:00 to 3:00 this afternoon. I could not reach him.

Q. In your capacity as business agent of the Union, do you know any men who dropped out?

A. Employees?

Q. Who were members of the Union?

A. As far as I know, personally, there haven't any really dropped out that I know of. They merely did not pay dues, which a lot of our members haven't done, but we sent them statements; not only to Shinner men, but all our members; they give them a chance to pay up.

Q. While you are members of your Union, does the Union object to the members working longer hours than those prescribed by the Union?

A. We do.

Q. Did you, or any other officer of your organization, if you know, endeavor to meet with officials of the Shinner Company to discuss terms and conditions of employment?

A. Yes, sir.

Mr. McCann: Objected to as immaterial.

The Court: What is the materiality of this, Mr. Padway?

Mr. Padway: To show that they wanted to discuss the things in dispute, and that they were turned down in the discussion.

The Court: It is the fact, apparently, here. I assume from the plaintiff's testimony that Mr. Shinner and Mr. [fol. 33] Russell declined to, and the other man, Drop, wouldn't have anything to do with it.

I told each one of our pickets on our lines, at the Shinner stores, to keep walking; not to molest anyone; not to get into any sort of argument, even with members working in-

side; and not to—just merely to tell the people we are picketing because Shinners are unfair to our Local A. F. of L., and not to talk too loud. Some of our men, the officers on the various places, have told me—I get from one market to another; I am not long at any one; go to the markets and talk to the pickets, and give them instructions how to conduct themselves. There has been no report came to me that any were boisterous or abusive. If such reports came to me, I would take the picket off the line. The signs contain the language shown in the photograph. There are no signs containing any other language. We have two Polish signs, in Polish lettering, that is all. What is described, or written, on the Polish sign, is the same as I see here in the photographs. Our Union has taken the position this company is unfair to our Local. We have not met with very serious difficulty in organizing some of the workers of the Shinner Company in our Union. We have some members of the Shinner Company Union in our local, right today. Others, we are trying to get.

Our Union is desirous that the Shinner Company employ its help 48 hours, and no longer. I have sought to notify Mr. Drop of the complaint our Union makes against the Shinner Company, in the matter of employment of its help.

Q. When did your organization commence to solicit Shinner employees, for your own Union?

A. Those Shinner employees belonged to Local 64 before we organized our Local 73; I don't know exactly because I was not an officer at that time, when they were transferred, but our secretary has those things all in his record.

Q. The Shinner employees pay dues to that local?

A. To Local 64, yes.

Q. Do you know the names of those paying dues?

A. No, sir, I could not say.

Cross-examination:

Q. Do you know any man in the employ of the Shinner Company at the present time that has paid any dues to your local Union this year?

A. Yes, sir.

[fol. 34] Q. Give me the name.

A. (Witness produces book) I have it in here, somewhere. Charles Trahoviac, 730 East Hadley.

Q. What is the date he paid?

A. I could not say.

Q. Has he paid dues in the last 90 days?

A. Yes, sir.

I do not know exactly what month he paid his dues. I would have to look up the records.

Q. Are you able to say it is in the last 90 days?

A. Not exactly.

If a member does not pay dues for two months he is notified of the arrears and if he has not paid on the first meeting of the third month he is automatically suspended. Those are part of the International rules and of our Local rules.

One of the police officers told me to have some of the pickets more quiet.

The dispute we claim to have with Shinner, is because of their refusal to sign this contract, which is marked "B". I have read that contract. I am not very familiar with it. Besides the refusal to sign this contract we have another claimed dispute in so far as that members that work for Shinners complained to us that they are working too long hours and not getting enough money at the time. I can't recall offhand any names of those men I claim complained. I would have to look them up on the records of the Financial Secretary. I never examined the records, because the Financial Secretary takes care of all them. I can't say exactly the date of the meeting I claim an employee of the Shinner Co. attended and made a complaint, but I don't believe it was over two months ago. At that meeting I believe there were two or three Shinner employees, I am not sure.

Q. Can you give me the first name, so we can try to locate the man?

A. I really don't know. Mr. Joe Heller was one, I believe.

He was an employee of the Shinner Company at that time. He was an employee of Shinner's when he joined our Local. He was an employee of Shinner's at the time he made the complaint. I know that because Frank Szablewski was an employee at that time also.

Q. How do you know they were working for Shinner's?

A. Because they told us everybody we know who is working for Shinner's, are members; I have a lot of witnesses who can prove better than I can. Personally I don't know; [fol. 35] I can get plenty men up here that do know.

Q. I would be satisfied if I could get what you know. How do you know these men were working for Shinner's two months ago?

A. I don't think I can answer that; I would rather have the men, themselves, answer that.

Q. You don't know if they were, or not, excepting as they told you, isn't that right?

A. Yes.

Redirect examination:

At our meetings we discussed another matter relating to employment, that is, employing men who worked all week in other plants and then worked in their plants on Saturdays.

Joseph H. Heller, a witness on behalf of the defendant, testified:

Direct examination:

I worked for Shinner two Saturdays ago. I ain't been there for two Saturdays. I am a member of Local 73. I have not worked any other place the last month or two. During the last couple of months I have worked two full weeks while one man was hurt and towards the last, three days a week, Thursday, Friday and Saturday.

I joined the A. F. of L. Union in 1933, when the rest joined, it was in September, 1933. I have not been a member from that time to the present time. I have worked three days a week; I could not uphold both, to hold my job I had to stay with the company union, I figured that way. I was a full-time employee of the Shinner Company until I was let off on June 16, 1934. Another man was engaged in my place at the time I was let off. I never talked to any official of the Company about my membership in the Company Union.

I did not attend the meeting what was discussed this morning at which Mr. Russell and Mr. Anderson were present. I have attended three meetings of the Company Union. At

one meeting of the Company Union the officials were present. It was the first one at which Mr. Shinner and Mr. Russell were present. There was nothing said by Mr. Shinner or Mr. Russell so long as I was there. To my understanding the [fol. 36] meeting was called to find out about our ten per cent raise. It took three months for that. The fourth month, they told us they could not give us a raise; it is two months ago.

Q. Did Mr. Shinner and Mr. Russell discuss it at that meeting?

A. It was after I was gone.

I am not picketing.

Steve Zurowski, a witness on behalf of defendant, testified:

Direct examination.

I am a member of Local 73 since July, 1933. I have never worked for the Shinner Company. The Union authorized this picketing. I am picketing. The instructions given to pickets are to "picket peacefully, not to molest anybody, not to talk to anyone, not to answer any one on the street, but to just say 'This market is unfair to Local No. 73' ". I have conducted myself in that manner. I have not observed any picket doing otherwise. There have been other pickets with me.

Cross-examination:

Q. You haven't heard any other pickets say anything at all?

A. Not anything I did not think was fair.

The store at 13th & Vliet is the only store I was at.

Ludwig Svoboda, a witness on behalf of complainant, testified:

Direct examination:

I am the man Mr. Lauf referred to as a member of Local 73. I am not a member of Local 73 any more. I was a member of it about a year ago. The reason I quit was that I did

not see it would do any good for me; pay $1.50 dues to the Union, which did not do me any good at all; I thought this organization was far better and I joined that. It saved $1.50. I know Steve Zurowski. He is now at the Third Street store, a fellow worker.

[fol. 37] Cross-examination:

No one invited me to join the company union. I joined in October. I was at the meeting at which Mr. Anderson and Russell were present. I took it for granted that collective bargaining would be discussed at this meeting. I don't remember if the constitution there was framed right at that meeting. I don't know who brought the constitution there. I wasn't there when it was brought. Mr. Russell and Anderson were present all of the time while I was present at the meeting. I cannot say they participated in the framing of the constitution.

Q. Was that the month you dropped out of the A. F. of L. organization?

A. Yes.

Q. The month you went into the company union, was that the month you dropped out of the A. F. of L?

A. No, I was out of there about a year before I came into our organization.

I joined the A. F. of L. in 1933. I remained a member a few months. I don't know exactly. I was a member of Local 64. I don't know whether I was ever transferred over to Local 73. I haven't been to any of the meetings.

It is Hereby Stipulated and Agreed that the above and foregoing shall constitute the written statement of evidence in the above entitled action to be used in a record on appeal to the Circuit Court of Appeals.

Dated this 27 day of June, 1935.

Gold & McCann, Attorneys for Complainant. Joseph A. Padway, Attorney for Defendants.

Approved this 5 day of July, 1935.

Certificate of Judge.

F. A. Geiger, District Judge.

[File endorsement omitted.]

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

Findings of Fact and Conclusions of Law—Filed April 19, 1935

The motion of the complainant, dated April 11, 1935, coming on to be heard before this court, Gold and McCann appearing as solicitors for the complaint, and Joseph A. Padway appearing as solicitor for all of the defendants, and after hearing the allegations and proofs of the parties and arguments of counsel, and being advised in the premises, I, the Judge before whom said cause was tried, to determine and find as

FINDINGS OF FACT

1. Complainant is a corporation duly organized and existing under and pursuant to the laws of the state of Delaware and located and having its office and principal place of business in the city of Wilmington in said state of Delaware, and a citizen and resident of said state, and at the time of the commencement of this action was and now is the owner and operator of five meat markets in the city of Milwaukee, Wisconsin, situated as follows:

1212 West Mitchell Street.
2221 North 3rd Street.
1306 West Vliet Street.
1208 West Lincoln Avenue.
3429 West North Avenue.

[fol. 39] 2. That the matter in controversy in this cause exceeds exclusive of interest and costs the sum, and exceed the value, of $3,000.

3. The defendant, Edward Lauf, is a citizen and resident of the city of Milwaukee, state of Wisconsin, and is the business manager of the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, which latter defendant is an unincorporated labor union, and a citizen and resident of the state of Wisconsin.

4. Complainant has in its employ in Milwaukee, Wisconsin 35 persons, who are employed in the business of

conducting the aforementioned meat markets and that none of said employees were, at the time of the commencement of this suit, members of the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73.

5. The defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, have made demand upon complainant that it require its said employees, as a condition of their continued employment by complainant, to become members of such defendant labor union, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73. That the complainant has notified its employees that they were free to join said union if they so desired, and complainant is now ready and willing to permit them to so join, but that said employees have declined and refused to join said labor union; that said defendant labor union was not the union chosen by any of the said employees of the complainant to represent them in any respect with the complainant.

6. For the purpose of coercing the complainant to require its employees to join and become members of said defendant labor union, and accept it as their bargaining agent and representative, as a condition of their continued employment, and for the purpose of injuring and destroying the business of the complainant at said meat markets, in the event complainant refused to yield to such coercion, the defendants have conspired and concerted between them to cause, and have, commencing on April 6, 1935 and continuously thereafter, caused false and misleading signs, placards and banners to be placed before the said meat markets of the complainant and have caused persons, none of whom are employees of the complainant, to parade and picket before the said meat markets of the complainant, and have falsely accused the complainant of being unfair to organized labor in its dealings with its said employees, [fols. 40-41] and that all of the defendants have prevented patrons and prospective patrons of the complainant from patronizing its said meat markets by molestation, annoyance, threats and intimidation.

7. That complainant has suffered, and will suffer, irreparable injury from the continuance of the practices of the

defendants, and that the customers and prospective customers of the complainant are and will be restrained and intimidated from patronizing said complainant, by reason of the acts of the said defendants.

8. There is in existence no labor dispute between complainant and defendants, or any or either of them.

9. That complainant has no adequate remedy at law, and I find as

CONCLUSIONS OF LAW

1. That complainant is bound under the terms of 29 U. S. C. A., section 102, as well as sections 268.18 and 268.19, Wis. Stats. of 1933, to permit its employees free agency in the matter of the choice of labor union or organization to act as their representatives.

2. Complainant is entitled to writ of injunction pendente lite of this court restraining and enjoining the defendants, and each of them, as well as their officers, agents, employees, associates and confederates from doing the acts complained of herein.

Dated at Milwaukee, Wisconsin, this 19 day of April, 1935.

F. A. Geiger, United States District Judge.

Bond on injunction for $1,000, approved and filed April 19, 1935, omitted in printing.

[fol. 42] IN UNITED STATES DISTRICT COURT

ORDER FOR WRIT—Filed April 19, 1935

The above entitled cause having come on to be heard upon the motion of the complainant for a writ of preliminary injunction upon the oral testimony of the respective parties, the court having heard such oral proofs and being fully advised in the premises, and having ordered its findings of fact and conclusions of law herein,

It is Ordered that upon the filing with the clerk of this court of good and sufficient security in the sum of One thousand and no/100 ($1000.00) Dollars conditioned according

to law, a writ of injunction pendente lite issue forthwith under the seal of this court enjoining and restraining the defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, and their officers, agents, employees, associates and confederates, from in any wise picketing the meat markets of the complainant herein located at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the City and County of Milwaukee, State of Wisconsin, and from seeking in any manner to coerce the complainant, E. G. Shinner & Company, Inc., to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, or to coerce said complainant to compel its said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, as the bargaining agent and representative of said employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in any wise unfair to [fol. 43] the said defendants or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing the complainant at its meat markets as hereinbefore described.

Dated, at Milwaukee, Wisconsin, this 19 day of April, 1935.

F. A. Geiger, United States District Judge.

[File endorsement omitted.]

In United States District Court

Writ of Injunction Pendente Lite—Filed April 22, 1935

Whereas, E. G. Shinner & Company, Inc., complainant, has filed in the office of the clerk of the District Court of the

United States for the Eastern District of Wisconsin a bill in equity duly verified in the above entitled matter, praying that the defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, be restrained and enjoined from in any wise picketing the meat markets of the complainant at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the city and county of Milwaukee, state of Wisconsin, and from seeking in any manner to coerce the complainant, E. G. Shinner & Company, Inc. to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, or to coerce said complainant to compel its said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, as the bargaining agent and representative of said employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patron- [fol. 44] ing the complainant at its meat markets as hereinbefore described; and

Whereas the Honorable Ferdinand A. Geiger, Judge of the District Court of the United States for the Eastern District of Wisconsin has this day made and entered an order allowing a writ of injunction pendente lite to be issued;

Now Therefore you, the said defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, your officers, agents, employees, associates and confederates are hereby strictly enjoined and restrained from in any wise picketing the

premises of the complainant, E. G. Shinner & Company, Inc. at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the city and county of Milwaukee, state of Wisconsin, and are hereby strictly enjoined and restrained from seeking in any manner to coerce complainant, E. G. Shinner & Company, Inc., to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, or to coerce said complainant to compel said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, as the bargaining agent and representative of said employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing the complainant at its meat markets as hereinbefore described, until the further order of our District Court in the premises.

This injunction pendente lite you must strictly observe under the penalties of the law.

Witness: The Honorable Ferdinand A. Geiger, the Judge of said court with the seal thereof hereto affixed this 19th day of April, A. D. 1935.

(Signed) B. H. Westfahl, Clerk. (L. S.)

[File endorsement omitted.]

[fol. 45] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed May 17, 1935

To the Honorable United States Circuit Court of Appeals for the Seventh Circuit, and to the Honorable District Court of the United States for the Eastern District of Wisconsin, the Honorable F. A. Geiger, Judge thereof Presiding:

The above named defendants considering themselves aggrieved by the Writ of Injunction pendente lite issued in the above entitled cause on the 19th day of April, 1935, do hereby appeal from said order and writ to the United States Circuit Court of Appeals for the Seventh Circuit, and state that their reasons for said appeal are specified in the assignment of errors filed herewith, and they, therefore, pray that an appeal may be allowed and that a transcript of the record and of the proceedings, and papers, evidence and exhibits in said cause, duly authenticated, together with the material exhibits introduced and used as evidence therein, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

Dated, this 16th day of May, 1935.

Joseph A. Padway, Attorney for Above Named Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed May 17, 1935

Now come the defendants and state there is manifest error in the proceedings in this cause and in the rendition of the order for and issuance of a writ of injunction pendente lite entered by the court herein on the 19th day of April, 1935, and assign as errors on appeal,

1. That the court erred in granting the complainant a writ of injunction pendente lite and erred in not denying complainant said injunction.

[fol. 46] 2. That the court erred in finding,

"8. There is in existence no labor dispute between complainant and defendants, or any or either of them."

3. The court erred in failing to find that there was a labor dispute between complainant and defendants, and that such dispute is governed by the provisions of "Title 29, U. S. C. A. Sec. 113, subsections a, b, c, and d thereof."

4. That the court erred in finding those facts set forth in paragraph five of the findings, and particularly that,

"complainant is now ready and willing to permit them to so join, but that said employees have declined and refused to join said labor union; that said defendant labor union was not the union chosen by any of the said employees of the complainant to represent them in any respect with the complainant."

5. That the court erred in finding the facts set forth in paragraph 6 of the findings, particularly that the defendants

"caused false and misleading signs, placards and banners to be placed before the said meat markets of the complainant."

and that the defendants

"have falsely accused the complainant of being unfair to organized labor in its dealings with the said employees."

6. That the court erred in finding,

"That complainant has suffered, and will suffer, irreparable injury from the continuance of the practices of the defendants, and that the customers and prospective customers of the complainant are and will be restrained and intimidated from patronizing said complainant, by reason of the acts of the said defendants."

7. That the court erred in its conclusions of law, to-wit,

"1. That complainant is bound under the terms of 29 U. S. C. A., section 102, as well as sections 268.18 and 268.19, Wis. Stats. of 1933, to permit its employees free agency in the matter of the choice of labor union or organization to act as their representatives.

"2. Complainant is entitled to writ of injunction pendente lite of this court restraining and enjoining the defendants, and each of them, as well as their officers, agents, employees, associates and confederates from doing the acts complained of herein."

8. That the court erred in restraining the defendants by writ of injunction pendente lite from engaging in the following acts:

(a) From "in any wise picketing the premises of the complainant."

[fol. 47] (b) From "advertising, stating or pretending that the complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally."

(c) From "in any wise persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing complainant."

9. That the court erred in refusing to permit all competent evidence in support of the answer and cross-complaint of the defendants to the effect that the complainant was guilty of violating Section 7 (a) of the National Industrial Recovery Act, Title 15, Chapter 17 U. S. C. A., and guilty of violating Sections 268.18 to 268.30 inclusive, of the laws of the State of Wisconsin, in that the complainant expressly pleaded reliance on 268.18 of the Wisconsin Statutes as a basis for injunctive relief.

10. That the court erred in refusing to permit all evidence of violations on the part of the complainant of Code No. 540, being a code of fair competition for the retail meat trade approved by the President of the United States, December 21, 1934, under and by virtue of the provisions of the National Industrial Recovery Act, (Title 15, Chapter 17, U. S. C. A.).

11. That the court erred in failing to find that the complainant had violated the National Industrial Recovery Act, Section 7 (a) thereof in the following respects:

(a) That the complainant denied to its employees full freedom of association and self-organization;

(b) That the complainant interfered with free choice of representatives by its employees;

(c) That the defendant pursued a course of conduct designed to prevent self-organization and free choice of representatives by assisting, fostering and promoting a so-called company union.

12. That the court erred in failing to find that complainant was not entitled to the relief prayed for, because the complainant had failed to comply with the obligations imposed upon it by Section 268.18, Wisconsin Statutes of 1933, in the following respects:

(a) That the complainant denied to its employees full freedom of association and self organization;

(b) That the complainant interfered with the free choice of representatives by its employees;

(c) That the defendant pursued a course of conduct designed to prevent self organization and free choice of [fol. 48] representatives by assisting, fostering and promoting a so-called company union.

13. That the court erred in failing to find the complainant was not entitled to the relief prayed for because the complainant had failed to comply with the obligations imposed upon it by Section 102 of Title 29 U. S. C. A. in the following respects:

(a) That the complainant denied to its employees full freedom of association and self organization;

(b) That the complainant interfered with the free choice of representatives by its employees;

(c) That the defendant pursued a course of conduct designed to prevent self organization and free choice of representatives by assisting, fostering and promoting a so-called company union;

14. That the court erred in failing to find that the complainant was not entitled to the relief prayed for because the complainant had failed to comply with the obligation imposed by law upon it to abide by the Code of Fair Competition for the meat industry, known as Code No. 540, Sec. 108, Title 29, U. S. C. A.

15. That the court erred in failing to find that the complainant was not entitled to the relief prayed for because the complainant had failed to make every reasonable effort to settle the dispute of the parties either by negotiation or with the aid of any governmental machinery of mediation or voluntary arbitration as required by Section 108 of Title 29, U. S. C. A.

16. That the court erred in failing to find the specific requirements of the provisions of 29 U. S. C. A. Sec. 107, in the following respects:

(a) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(b) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection;

(c) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained;

(d) That substantial and irreparable injury to complainant's property will follow.

17. That the court erred in issuing a writ of injunction pendente lite against Edward Lauf and against Amalga- [fol. 49] mated Meat Cutters and Butcher Workmen of North America, Local 73, because there is no evidence that Edward Lauf or said union have made any threats or committed any unlawful act, nor had they or either of them knowledge of any such acts.

18. That the court erred in issuing an injunction pendente lite against officers, agents, employees, associates and confederates, there being no evidence that officers, agents, employees, associates and confederates of the defendants committed any unlawful acts, and for the reason that there is no showing that the defendants had any officers, agents, employees, associates and confederates for the purpose of committing illegal or unlawful acts.

19. That the court erred in its exclusion of evidence.

20. That the court erred in its admission of evidence.

Wherefore the defendants pray that the order of the above court of April 19, 1935, directing the issuance of the writ of injunction pendente lite in the above action be reversed and the District Court be directed to enter an order denying a writ of injunction pendente lite.

Joseph A. Padway, Defendants' Attorney.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed May 17, 1935

The defendants having prayed an appeal from the order for an issuance of a writ of injunction pendente lite herein,

It Is Ordered that the appeal so prayed for is hereby allowed and the Clerk of this Court is directed to make return to this appeal in accordance with the rules and practice of the United States Circuit Court of Appeals for the Seventh Circuit.

It Is Further Ordered that the appeal bond to be given [fol. 50] by defendants is hereby fixed at the sum of Two Hundred Fifty ($250.00) Dollars.

Dated, at Milwaukee, Wis., this 17th day of May, 1935.

F. A. Geiger, Judge of the United States District Court for the Eastern District of Wisconsin.

[File endorsement omitted.]

Bond on appeal for $250.00, approved and filed May 17, 1935, omitted in printing.

[fol. 51] IN UNITED STATES DISTRICT COURT

STIPULATION AND ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL—Filed June 14, 1935

To the Honorable F. A. Geiger, Judge of the U. S. District Court, Eastern District of Wisconsin:

It Is Hereby Stipulated by and between the parties to the above entitled action by their attorneys, that the time within

which the appeal heretofore taken in said action may be extended up to the 27th day of June, 1935.

Dated, June 13th, 1935.

Gold & McCann, Attorneys for Complainant. Jos. A. Padway, Attorney for Defendants.

Upon the above and foregoing stipulation, and on motion of Joseph A. Padway, attorney for the defendants above named,

It Is Ordered that the time within which to appeal in the [fol. 52] above entitled action may be and the same hereby is extended up to the 27th day of June, 1935.

F. A. Geiger, Judge.

Dated, June 14th, 1935.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AND ORDER EXTENDING TIME TO FILE RECORD ON APPEAL—Filed June 25, 1935

To the Honorable F. A. Geiger, Judge of the U. S. District Court, Eastern District of Wisconsin:

It Is Hereby Stipulated by and between the parties to the above entitled action by their attorneys, that the time within which the appeal heretofore taken in said action may be extended up to the 10th day of July, 1935.

Dated, June 25th, 1935.

Joseph A. Padway, Attorney for Defendants. Gold & McCann, Attorneys for Complainant.

Upon the above and foregoing stipulation, and on motion of Joseph A. Padway, attorney for the defendants above named,

It Is Ordered that the time within which to appeal in the above entitled action may be and the same hereby is extended up to the 10th day of July, 1935.

(Signed) F. A. Geiger, Judge.

Dated, June 25th, 1935.

[File endorsement omitted.]

[fol. 53] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR RECORD—Filed May 17, 1935

To the Clerk of the United States District Court of the Eastern District of Wisconsin:

SIR:

Please prepare the transcript of record and proceedings in the above entitled cause for use on appeal heretofore allowed herein and include in said transcript the following:

1. Bill of complaint.
2. Subpœna in equity.
3. Notice of motion for preliminary injunction.
4. Notice of adjournment for hearing on motion for preliminary injunction.
5. Answer and cross complaint.
6. Findings of fact and conclusions of law.
7. Bond as security for injunction pendente lite.
8. Order for preliminary injunction.
9. Writ of injunction pendente lite.
10. Petition for appeal.
11. Assignment of errors.
12. Order allowing appeal.
13. Defendants' bond on appeal.
14. Citation.
15. Præcipe.
16. Statement of evidence.
17. Order approving statement of evidence.
18. Clerk's certificate.

The foregoing præcipe is hereby approved and it is so ordered.

Dated, at Milwaukee, Wisconsin, this 17th day of May, 1935.

(Signed) F. A. Geiger, District Judge.

[File endorsement omitted.]

[fols. 54-55] Clerk's certificate to foregoing transcript omitted in printing.

Citation, in usual form, showing service on Gold & McCann, filed May 17, 1935, omitted in printing.

[fol. 56] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 57] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration and decision of this application.

Endorsed on cover: File No. 41,774. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 293. Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, petitioners, vs. E. G. Shinner & Company, Inc. Petition for a writ of certiorari and exhibit thereto. Filed August 7, 1937. Term No. 293, O. T., 1937.

FILE COPY

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 293

EDWARD LAUF and AMALGAMATED MEAT CUTTERS and BUTCHER WORKMEN OF NORTH AMERICA, Local No. 73,
Petitioners

-vs.-

E. G. SHINNER & COMPANY, INC.,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MORRIS FROMKIN,
Counsel for Petitioners.

HAMMERSMITH-SORTHEVER CO. MILWAUKEE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. ——

EDWARD LAUF and AMALGAMATED MEAT CUTTERS and BUTCHER WORKMEN OF NORTH AMERICA, Local No. 73,
Petitioners

-vs.-

E. G. SHINNER & COMPANY, INC.,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, the petitioners above named, respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit

affirming a judgment of the District Court of the United States for the Eastern District of Wisconsin. Judgment was rendered in the Circuit Court of Appeals, May 13, 1937 (P. 4, supplement to the record). Their number 6172.

The appeal was from a final judgment of the District Court awarding a permanent injunction to respondent restraining petitioners from picketing or in any manner persuading the public not to patronize respondent's places of business (R. 11).

SUMMARY STATEMENT OF MATTERS INVOLVED

Petitioners are respectively the business agent and a labor union composed of butcher workmen and meat cutters in the City of Milwaukee, which union is affiliated with the American Federation of Labor. Respondent is a Delaware corporation operating meat markets in various cities, including several markets in Milwaukee.

Petitioner Local 73 picketed five stores of respondent in Milwaukee for the purpose of inducing respondent to sign what is known as a "Preferential Contract," which requires the employer to give preference to union workmen in choosing employees.

Respondent filed its bill of complaint in the District Court (Record (5551) 1 to 5) asking for temporary and permanent injunction. After the taking of oral testimony upon the application for the temporary injunction, the court made findings of fact and conclusions of law (Record (5551) 38, 39) and awarded a temporary injunction restraining all picketing and all advertising of

the fact that respondent was unfair to organized labor (Record (5551) 43, 44).

An appeal was taken from the order awarding the temporary injunction and, after hearing on the appeal in the Circuit Court of Appeals, the order awarding the temporary injunction was affirmed (Lauf v. Shinner, 82 Fed. (2) 69).

The case was then tried in the District Court, a small amount of additional testimony was taken and it was stipulated that all the testimony taken upon the hearing for the temporary injunction be considered as testimony upon the trial. The District Court made findings of fact and conclusions of law practically identical with the findings of fact and conclusions of law which it had made upon the hearing for temporary injunction (Record (6172) 6 and 7). And awarded a permanent injunction practically identical in terms with the temporary injunction (Record (6172) 10 and 11). Judgment was entered awarding the injunction as prayed for. An appeal from this judgment was taken, and it was stipulated and the Circuit Court of Appeals ordered that the record of the previous appeal (5551) be considered as part of the record upon the second appeal. Upon the second appeal, judgment was rendered affirming the judgment of the District Court.

QUESTIONS PRESENTED

The case squarely presents the question as to whether a Federal Court has the right under the terms of the Norris-LaGuardia Act (Secs. 101 to 115, Title 29, U.S.C. 47 Stats. 73) to enjoin picketing and peaceful persuasion by a labor union and its members where the

employees of the employer who is being picketed are not members of such labor union, and are not on strike.

The case presents the same question under the terms of the Wisconsin Labor Code (Wis. Stats. 1935, Secs. 103.51 to 103.63). The Wisconsin Labor Code is practically identical with the Norris-LaGuardia Act.

The question involved in the determination of the foregoing question is whether a situation such as exists in the present case, that is, where the employees of the employer being picketed are not members of the labor union doing the picketing, and are not on strike, constitutes a labor dispute within the meaning of the Norris-LaGuardia Act and the Wisconsin Labor Code.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The United States Circuit Court of Appeals for the Seventh Circuit has decided a federal question in a way in conflict with applicable decisions of this court.

Senn v. Tile Layers Protective Union, Local No. 5, 300 U. S. ——— 81 L. Ed. 829, 57 (16) S.C.R. 857.

National Labor Relations Act Cases, 300 U. S. ———, 81 L. Ed. 563, 585, 603, 108 A.L.R. 1352.

2. The United States Circuit Court of Appeals for the Seventh Circuit has decided a question of substance in a way which is in conflict with the decision of another Circuit Court of Appeals upon the same question.

Levering & Garrigues Co. et al, v. Paul L. Morrin et al, 71 Fed. (2d) 284 (Certiorari denied, 293 U. S. 595).

3. The United States Circuit Court of Appeals for the Seventh Circuit has decided an important question of local law in a way in conflict with applicable local decisions.

American Furniture Co. v. I. B. of T. C. & H. of A., 222 Wis. 338, 268 N. W. 250.

Senn v. Tile Layers Protective Union, Local No. 5, 222 Wis. 383, 268 N. W. 270.

4. The United States Circuit Court of Appeals for the Seventh Circuit has decided an important question of general law in a way untenable and in conflict with the weight of authority.

Steffes v. Motion Picture Operators' Union, 136 Minn. 200, 161 N. W. 524.

Kirmse v. Adler, 311 Pa. 78, 166 Atl. 566.

Cinderella Theater Co. v. Sign Writers' Local Union (D.C. Mich.), 6 F. Supp. 164.

Exchange Bakery & Restaurant Co. v. Rifkin, 157 N. E. 130.

National Protective Association of Steam Fitters & Helpers v. Cummings et al., 170 N. J. 315, 63 N. E. 369.

Bayonne Textile Corp. v. Amer. Fed. of Silk Workers et al., 116 N. J. Eq. 146, 176 A. 551.

Nann v. Raimist etc., 255 N. Y. 307, 174 N. E. 690.

Wise Shoe Co., Inc., v. Retail Shoe Salesmen's Union, 266 N. Y. 264, 194 N. E. 749.

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Jacobs v. Cohen, 76 N. E. 5.

Kissem v. Printing Company, 92 N. E. 214.

Roddy v. United Mine Workers (Oklahoma), 139 Pac. 126.

Shaughnessy v. Jordan (Indiana), 111 N. E. 622.

American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184.

Norris-LaGuardia Act, (Secs. 101 to 115, Title 29, U.S.C. 47 Stats. 73).

Wisconsin Labor Code (Wis. Stats. 1935, Secs. 103.51 to 103.63).

Wherefore, it is respectfully prayed that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that court to certify and send to this Court for its review and determination the full and complete transcript of the record and all proceedings in the case at bar, their number 5551 and 6172, and that the judgment of said United States Circuit Court of Appeals for the Seventh Circuit may be reversed by this Honorable Court or the case ordered dismissed and that your petitioners may have such other and further relief in the premises as this Honorable Court may deem just and proper and your petitioners will ever pray.

EDWARD LAUF and AMALGAMATED MEAT CUTTERS and BUTCHER WORKMEN of NORTH AMERICA, Local 73,

Petitioners.

MORRIS FROMKIN,

Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit, which has not yet been published, will be found as page 4 of the Supplement to the Record.

The opinion recites that the appeal is from a decree permanently enjoining petitioners from picketing respondent's places of business * * * * and from advertising that respondent is unfair to organized labor or molesting or persuading its customers, or prospective customers to cease patronizing them. The court refers to its opinion on the previous appeal from the decree awarding a temporary injunction (Lauf v. Shinner & Co. 82 F. (2d) 68) and states that it was shown upon the previous appeal that no controversy existed between respondent and its employees, none of whom belonged to petitioners' union, and that said unions sought to compel petitioners to require its employees to join the union as a condition of their continued employment. The court states, that upon these facts it held upon the previous appeal that no labor dispute was present, and hence the Norris-LaGuardia Act was no bar to the right of the court to issue the injunction. For these reasons the court affirmed its position set forth in the opinion on the previous appeal.

In its opinion on the previous appeal, that is, from the temporary injunction, (82 Fed. (2) 69), the Circuit Court of Appeals starts with the premise that no strike or dispute between employer and employee is involved in the case. It reviews the sections of the Norris-LaGuardia Act, (29 U.S.C 101, 115), especially Sec. 104

which abolishes the jurisdiction of the Federal Courts to enjoin, among other things, "(e) giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking, patrolling or any other method not involving fraud or violence; (f) assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute; (i) advising, urging or otherwise causing or inducing, without fraud or violence the acts heretofore specified."

The court further sets forth Sec. 107, Title 29, U.S.C., the provision of the Norris-LaGuardia Act which abolishes the jurisdiction of Federal Courts to issue temporary or permanent injunctions in cases involving or growing out of labor disputes, except after findings of fact by the court—

> "(a) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained.
>
> (b) That substantial and irreparable injury to complainant's property will follow.
>
> (c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief.
>
> (e) That the public officers charged with the duty to protect complainant's property, are unable or unwilling to furnish adequate protection."

The court then recites Sec. 113, Title 29, U.S.C., which is as follows:

> "(a) A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein;

or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or association of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees and associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' * * * of 'persons participating or interested' therein * * *

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee * * *"

The court further states, that the provisions of the Wisconsin Labor Code are not materially different from the provisions of the Norris-LaGuardia Act.

The court concludes that both the Norris-LaGuardia Act and the Wisconsin Labor Code are applicable only

to cases involving or growing out of a labor dispute, and that the present case is not such a case, because the controversy is merely between two unions, and because none of respondent's employees was a member of Local 73, the petitioner; that, therefore, neither employer nor any of his employees is engaged in a labor dispute with anyone, and that the object of the picketing and persuasion used by the petitioner, Local 73, was an unlawful one, that is, of coercing respondent to force his employees to join the petitioner union. Hence, the court concludes, there is no labor dispute involved within the meaning of the Norris-LaGuardia Act, or the Wisconsin Labor Code, and for this reason sustains the judgment of the District Court, although that court made no findings of the facts required to be made by the court under Sec. 107, Title 29, U.S.C.

The District Court had made findings of fact and conclusions of law which set forth merely that the petitioner union had made demand upon respondent that it require its employees to become members of petitioner union; that respondent had notified its employees that they were free to join petitioner union, and that said employees had declined to join, and that petitioner union was not the union chosen by any of said employees to represent them. Further, that for the purpose of coercing respondent to require its employees to join the union, and accept it as their bargaining agent, and for the purpose of injuring respondent's business, petitioner union had conspired to cause false and misleading signs and banners to be placed before respondent's meat markets, and had caused persons, none of whom were employees of respondent, to picket before the markets, and had falsely accused respondent of being unfair to organized labor, and had prevented patrons from patronizing said markets by moles-

tation, annoyance, threats and intimidation. The court found further that irreparable injury to respondent would result because of this conduct, and that there is no labor dispute between petitioners and respondent.

Upon the basis of these findings, the court concludes that under the terms of the Norris-LaGuardia Act, 29 U.S.C. Sec. 102 and the Wisconsin Labor Code, respondent is bound to permit its employees free agency in the choice of a labor organization, and for this reason the court awards the injunction (R. 38, (5551), R. 6, (6172)).

Upon the basis of these findings, the District Court refused to make the findings required under Sec. 107, Title 29, U. S. C., and refused to go into the question as to whether any basis existed for making the finding required by that section, that is, it was the theory of the court that since there was no labor dispute, it was immaterial as to whether unlawful acts had been threatened, or would be committed unless restrained, as provided by Subsection (a), Sec. 107, Title 29, U.S.C. or that as to each item of relief greater injury would be inflicted upon complainant by the denial of relief, than would be inflicted upon defendants by granting same, as provided by Subsection (c) Sec. 107, or that public officers charged with the protection of complainant's property were unable or unwilling to furnish adequate protection as provided by Subsection (e) of Section 107.

There was no facts in the evidence which would have justified the court in finding the matters required by these subsections. The issue was therefore clear as to whether the case presented a labor dispute within the scope of the Norris-LaGuardia Act.

ERRORS TO BE ASSIGNED

1. The Circuit Court of Appeals Erred in Holding There Was No Labor Dispute Under the Federal Law and the Law of Wisconsin.

ARGUMENT

I.

This Case Involved a Labor Dispute Within the Terms of the Norris-LaGuardia Act, Secs. 101 to 115, Title 29, U.S.C. 47 Stats. 70, 73.

The Norris-LaGuardia Act provides, Sec. 104, Title 29, U.S.C.

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute *(as these terms are hereinafter defined)* from doing whether singly or in concert, any of the following acts,"

and enumerates amongst other things, (e) Giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking or patrolling; (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute; (g) Advising or notifying any person of an intention to do any of the acts specified.

It is apparent that the jurisdiction to issue injunctions or restraining orders in labor controversies was abolished by this section. It is definitely stated, that no court of the United States shall have jurisdiction to issue any restraining order or injunction in any case involving or growing out of a labor dispute.

Sec. 113, Title 29, U.S.C. clearly and definitely defines the terms used throughout the act. Subsection (c) provides:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

It is clear that the act is not one merely altering or governing procedural matters, but was definitely intended as a limitation upon the jurisdiction of the federal courts. The language could not be interpreted to mean anything else. It means that wherever a labor dispute exists the jurisdiction of the federal courts to issue injunction is taken away, except upon the enumerated conditions.

If no definition were given in the act, two possible interpretations of the words "labor dispute," would be open to the court; one, that it included only controversies between an employer and his employees; two, controversies between employers and any employees, whether his or not.

Petitioners contend that under the terms of the definition in Sec. 113, it is impossible to mistake the intent of Congress, and that such intent is so clearly expressed that there is no room for judicial construction. That intent definitely and clearly adopted the second definition above. Thus, a labor dispute includes any controversy concerning terms or conditions of employment. It is not limited in this regard to a controversy between an employer and his specific employees. It further includes any controversy concerning the association or representation of persons in negotiating, etc., terms or conditions of employ-

ment. Again there is no restriction that the controversy concerning association, etc., must be limited to a particular employer and his employees, but in order to prevent all possible doubt, and to make it excessively clear that it was not intended that the act be restricted to controversies between an employer and his own employees, Congress added the words "regardless of whether or not the disputants stand in the proximate relation of employer and employee." These words absolutely and definitely exclude definition No. 1 above as a possible intent in the minds of the legislative body. From these words, it is definitely clear that Congress intended the act to apply to any controversy between employers and employees, whether the employees were employees of the employer with whom they had a dispute or not. It would seem to be clear that it was the intent of Congress to cover by the act any controversy between workingmen and employers concerning the conditions of employment, or the association or representation for the fixing of terms. It is for the court, if it is convinced, that such is the intent of Congress to give it this effect.

The only limitation beyond the definition in Subsection (c) upon a labor dispute as used in the act, is Subsection (a) of Sec. 113.

> "A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3)

between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined)."

This section not only does not give any basis for the narrow definition of the words "labor dispute," but helps to make it clear beyond doubt that Congress intended the act to cover a controversy such as is involved in this case. Firstly, a case is a labor dispute when it involves persons engaged in the same industry, that is, if butchers have a dispute with employers of butchers, that is a labor dispute. The subsection goes farther and makes the controversy a labor dispute not only when the controversy is between those in the same industry, but when it is between those who have direct or indirect interests in such industry. This would seem to clearly show the intent to extend the terms even beyond those in the same industry to other workingmen who have the same objective as the workingmen who are having a dispute with an employer. This goes much farther than is necessary to hold that the present case involves a labor dispute. And the section provides further that a controversy is a labor dispute when it is between those who are members of the same or an affiliated organization of employers or employees. This would clearly seem to mean that a dispute of any union of the American Federation of Labor, which is affiliated with all the other unions of that federation, is a labor dispute notwithstanding that such controversy is not between a union and an employer in the same craft or industry. That is, a labor dispute exists when an American Federation of Labor Carpenters' Union has a controversy with a butcher employer. Of course, clearly, this goes much farther than it is necessary for the court to go in

order to hold that the present controversy which is between employers and employees in the same industry, is a labor dispute.

It is submitted upon the foregoing that the Circuit Court of Appeals was in error in its construction of the act, and that it should now be held that the present controversy is a labor dispute. In order to hold the contrary, it is necessary to delete from the statute several phrases. It is impossible to understand how it could be held that the present controversy is not a labor dispute, unless the phrase "regardless of whether or not the disputants stand in the proximate relation of employer and employee," is entirely eliminated from the statute. The same is true of that part of Subsection (a) of Sec. 113, which says, "a case shall be held to involve a labor dispute when it involves persons engaged in the same industry, or who have direct or indirect interests therein," and also the phrase "or who are members of the same or affiliated organizations of employers or employees, whether such dispute is between one or more employers or associations, and one or more employees or associations." It is respectfully submitted that the decision that this is not a labor dispute involves the necessary and inevitable logical elimination of this language.

The Norris-LaGuardia Act was the result of a long struggle by organized labor to obtain from Congress further rights and to mitigate the restrictions on its activities in labor struggles. After it was found that the

Clayton Act, passed on October 15, 1914, 38 Stat. 738,

did not accomplish what organized labor had expected, the struggle was continued through the years to get Congress to pass further legislation to give organized labor

the rights which it thought it had obtained in the Clayton Act.

In

American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184,

this Court decided that the Clayton Act did not permit workingmen who were neither employees, nor ex-employees, of an employer to picket and carry on the other activities incident to a strike against such employer, without being subject to be enjoined by the Federal Court. It was held in that case that while employees and ex-employees, and members of a labor union of such employees and ex-employees could not be enjoined from peaceful picketing, persuasion, etc. other workingmen even in the same craft or industry could be so enjoined. It was to avoid this effect of this decision that the campaign was carried on to persuade Congress to extend the scope of its labor legislation. This was finally accomplished in the Norris-LaGuardia Act. There can be no question but that the sole purpose of the act was to change the law as it had been laid down in the above case, that is, that at least all those engaged in the same industry or craft could use the usual peaceful remedies of organized labor against an employer, whether they were his employees, or ex-employees, or not. That is really the sole advance, so far as the organized labor is concerned, of the Norris-LaGuardia Act. By the decision of the Circuit Court of Appeals that purpose of the act is set at naught, and by that decision the law remains as it was under the American Steel Foundries case. This means, that the Norris-LaGuardia Act has accomplished nothing, and added no feature to existing law. Certainly, it is clear that this was not the intent of Congress.

Since it was intended by the Norris-LaGuardia Act to change the law as it then existed, it is also clear that it was meant that organized labor could strike, picket and use peaceful persuasion against any employer in the same trade or industry whether any employees or ex-employees of that employer participated in the struggle or not. There can be no doubt for instance that Congress intended that if a Union comprising a great number of employees in a vast number of shoe factories throughout United States saw fit to picket or use peaceful persuasion against all or a number of such factories, this could not be enjoined even though employees in certain factories took no part in the struggle and were not in favor of it. Numerous illustrations of strikes against a large number of plants, united or not united in one organization, have occurred very recently, and it cannot be doubted that Congress intended that labor unions representing workingmen of the craft employed in such plants should have the right to use the peaceful means of the labor struggle against such plants notwithstanding that there was no specific dispute in some of the plants between the particular employer and his specific employees. This right, the decision of the Circuit Court of Appeals takes away. It is submitted that this was clearly not the intent of Congress, and that in so holding the court has misconceived the legislative intent, and that the judgment of the District Court which it affirmed is therefore erroneous, and should be reversed.

There is in the case another basis for a labor dispute besides that of unionization, and that is the question of hours of work. To this the trial court paid no attention at all, and it was not discussed by the Circuit Court of Appeals. E. G. Shinner, President of respondent testified (R. 14, (5551)) that the company does employ some of its em-

ployees more than 48 hours per week, which is the union standard, and was the demand of the contract presented by petitioners to respondent. (See testimony of Archie Russell, Vice-President of respondent, (R. 18, (5551)). And testimony of Petitioner, Edward Lauf, (R. 32, 33 (5551)). Therefore, even if the court was of the opinion that the effort to organize respondents' employees and cause them to join petitioner union, was not sufficient ground to constitute a labor dispute where respondent's employees were not desirous of joining. There was a dispute about terms and conditions of employment upon which the court should have held, that there was a labor dispute irrespective of its opinion on the other question.

II.

The Decision of the Circuit Court of Appeals Is In Conflict With the Decisions of This Court.

The question at issue is no longer an open one in this Court . On May 24, 1937, in the case of

Senn v. Tile Layers Protective Union, Local No. 5, 300 U. S. ——— 81 L. Ed. 829, 57 (16) S.C.R. 857

this Court decided that a labor union could not be enjoined from picketing in a case in which the only question at issue was whether the employer should be permitted to work at the trade himself, and that such picketing could not be enjoined by the court, although none of the employees of the particular employer who was being picketed were members of the labor union which was doing the picketing, and although there was no dispute between the employer and his employees. With reference

to the particular question at issue here, the Court says, in the majority opinion by Justice Brandeis:

> "The unions acted, and had the right to act as they did, to protect the interest of their members against the harmful effect upon them of Senn's action * * * Because his action was harmful *the fact that none of Senn's employees was a union member or sought the union's aid was and is immaterial.*"
>
> "The law of Wisconsin as declared by its highest court permits unions to endeavor to induce an employer when unionizing his shop to agree to refrain from working in his business with his own hands — so to endeavor, *although none of his employees is a member of the union.*"
>
> "Each member of the unions, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through the exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent upon securing work, and securing work is dependent upon public favor. To win the patronage of the public each may strive by legal means." (Italics ours.)

The decision was rendered with reference to the Wisconsin Labor Code, Secs. 103.51 to 103.63, Wisconsin Statutes, 1935, but the provisions involved are identical with the provisions of the Norris-LaGuardia Act. Thus, the definition of "Labor Dispute," Wisconsin Statutes, Sec. 103.62 (3) is identical with the definition in Sec. 113, Title 29 (c), and the language describing a labor dispute, Statutes of Wisconsin, Sec. 103.62 (1) (2), is identical with Sec. 113, Title 29 (a) (b). Therefore, the decision of this court is a decision as to the question involved under the Norris-LaGuardia Act.

It follows that what was sustained under the Wisconsin Labor Code as peaceful and legal conduct, must likewise

be sustained under the Norris-LaGuardia Act, the parallel Federal Statute.

The facts in the Senn case go much farther than the facts in the instant case, and require an interpretation of the provisions of the Labor Code much broader than is contended for by petitioners. The Senn case extended the doctrine of

> *American Furniture Co. v. I. B. of T. C. & H. of A.*, 222 Wis. 338, 268 N. W. 250.

The facts in the latter case were exactly parallel to the facts in the present case, that is, the union was striving to unionize plaintiff's shop in spite of the fact that none of his employees were members of the union. In the Senn case, the union not only insisted on unionizing Senn's shop, although his men were not members of the union, but demanded that he himself cease working with the tools of his trade. Upon these facts this Court held that the union had the right to picket and use all means of peaceful persuasion to bring about the desired result. It is, therefore, submitted that there can be no question but that the law is settled in this Court that appellant union has the right to picket in a case such as the present. Therefore, the decision of the Circuit Court of Appeals is not in accord with the law as laid down by this Court.

It is submitted that even the dissenting Justices of this Court in the Senn case clearly recognize the right of a union to picket under circumstances such as exist in the present case. The dissenting opinion says:

> "It may be assumed that the picketing, upheld in virtue of the challenged statute, lawfully might be employed in a controversy between employer and employees for the purpose of persuading the employ-

er to increase pay, etc., and dissuading non-union workers from displacing union members. The right of workers, parties to a labor dispute, to strike and picket peacefully to better their condition does not infringe any right of the employer."

And on page 6, Justice Butler says:

"The contest is not between unionized and other contractors, or between one employer and another. The immediate issue is between the unions and plaintiff in respect of his right to work in the performance of his own jobs. * * * Between union members and plaintiff there is no immediate or direct competition. * * * The interest of the unions in the manual labor done by the plaintiff is so remote, indirect and minute, that they have no standing as competitors. Under the circumstances disclosed here, the conduct of the unions was arbitrary and oppressive."

It is clear from Justice Butler's opinion that the dissent is based solely on the fact that the defendant union was not in competition with the employer who sought to work at the trade himself, and that for this reason only the picketing was unlawful. It follows that if the union had been picketing because it was in competition with the employees of the employer whom it was picketing, the picketing would be lawful. Here, the appellant union is composed of butcher workmen in competition with the butcher workmen employees of respondent, and consequently the picketing is lawful, even within the reservations of the dissenting opinion in the Senn case.

The decision of the Circuit Court of Appeals was likewise out of accord with the decisions of this court in

Virginia Railway Co. v. System Federation No. 40, 81 L. Ed. 470, 299 U. S. 529.

National Labor Relations Act Cases, 300 U. S. ———, 81 L. Ed. 563, 585, 603, 108 A.L.R. 1352.

III.

The Decision of the Circuit Court of Appeals is Contrary to the Labor Code of Wisconsin, And Its Interpretation by the Supreme Court of Wisconsin.

As has been stated, the decision of the Circuit Court of Appeals holds that the object to be attained by petitioners' picketing is unlawful, and that, therefore, the act of picketing is unlawful.

Sec. 103.53, Statutes of Wisconsin, 1935, provides, somewhat differently than the parallel provision of the Norris-LaGuardia Act, that the specific acts enumerated, whether performed singly or in concert, shall be legal. The enumerated acts include, giving publicity to, or communicating information regarding the existence of or the facts involved in any dispute, whether by advertising, speaking; patrolling any public street or any place where any person or persons may lawfully be; assembling peaceably to do any of the acts specified; advising or notifying any person or persons of an intention to do any of the acts specified; advising, urging or inducing others to do the act specified; peaceful picketing or patrolling, whether engaged in singly or in numbers. The parallel section of the Norris-LaGuardia Act, Sec. 104, Title 29, U.S.C. does not provide in the same language that such acts are legal, but takes away the jurisdiction to issue injunctions against them, nor does it contain the extra and specific provision contained in 103.53 Wisconsin Statutes (1) as follows:

> "Peaceful picketing or patrolling, whether engaged in singly or in numbers, shall be legal."

It is clear from the foregoing quotation of the language of the Statutes of Wisconsin that the legislature has made

the acts here enjoined legal acts if they were not so before the enactment of the statute. This court held in

Senn v. Tile Layers Protective Union, supra,

under Point Second, that by virtue of the statute such acts were legal. The court says, under Point Third,

> "That the members of a labor union might, without special statutory authorization by a state make known the facts of a labor dispute for freedom of speech is guaranteed by the federal constitution."

It is submitted that in view of this provision of the statute of Wisconsin, the decision of the Circuit Court of Appeals to the effect that the means here employed, that is, the picketing and persuasion, were unlawful, is clearly erroneous.

In

American Furniture Co. v. I. B. of T. C. & H. A. Local No. 200, 222 Wis. 338, 268 N. W. 250,

the Supreme Court of Wisconsin decided a case involving exactly the same situation as exists in the present case. In that case none of the employees of the plaintiff were members of the defendant union which picketed plaintiff's place of business, and the employees had all voted on two separate occasions unanimously that they did not want to join the union and were satisfied with their conditions of employment. There was absolutely no dispute therefore between the employer and his own employees. The question as to whether under these circumstances there was a labor dispute within the meaning of the Wisconsin Labor Code, and the Norris-LaGuardia Act, was the principal issue in the case. The court says (222 Wis. 347):

> "Upon these facts, the question is squarely presented whether there was a labor dispute involving

plaintiff and defendants in view of the fact, (1) that no employee of plaintiff was a member of defendant unions; (2) that none desired or was willing to become a member; (3) that the employees were wholly satisfied with the conditions of their employment; (4) that the employees opposed the execution of the contracts proposed for plaintiff's execution; (5) that plaintiff has been unwilling to coerce its employees to join the unions, and has throughout been willing to take such position in that respect as its employees desired."

Upon this state of facts, the court decided, after careful analysis of the statutes and their historical background that there was clearly a labor dispute and refused to enjoin the union from picketing and peaceful persuasion. The court shows that the acts sought to be enjoined are legalized by the statute, and that the jurisdiction of the courts to proceed by equitable relief, was clearly intended to be taken away.

The decision is squarely contrary to the decision of the Circuit Court of Appeals in the instant case.

The question raised by the Circuit Court of Appeals in its decision in this case that the demand of the union upon the employer to recognize it as the bargaining agent of his employees, although his employees were not members of that union and did not designate it as a bargaining agent, is coercion in violation of the preamble of the Norris-LaGuardia Act and the Wisconsin Labor Code, was answered by the court in the negative (American Furniture case, supra, 367, et seq.)

The court there shows that the preamble of both acts provides only that the worker shall be free from interference and coercion *by the employer*, and that neither act

contained any provision, either in the body of the act, nor in the preamble, prohibiting such interference or indirect coercion as may result from the activity and efforts of a labor union in the exercise of its rights of persuasion and effort at organization to get all employees into the union. It is clear that neither Congress nor the legislature of Wisconsin intended that there should be any prohibition on the labor unions in exercising to the fullest extent their efforts to obtain 100% organization.

The language of the preamble of both acts is identical with reference to this matter, and is as follows:

> "The individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows. It is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. * * *"

It will be noted that the language of both preambles is "free from the interference, restraint or coercion of *employers of labor, or their agents.*"

If Congress and the legislature of Wisconsin had intended to prohibit the incidental effect in forcing certain employees who do not wish to join organizations into such organizations, it would have said so, or at least would not have used the definite and clear language restricting

only coercion by employers. This is the old argument against the strike for a closed shop. It has been repeatedly urged that the strike for a closed shop forces those employees who do not wish to join any organization, either to join the organization or quit their employment. Nevertheless, the question of the right to strike for, and agitate for, the closed shop is no longer an open one.

The Circuit Court of Appeals says, that it is the declared public policy of both the Nation and the State of Wisconsin to protect the substantive right of employees not to be coerced to join any organization, and that such right will be protected by injunction even though no specific provision therefor be contained in either the Wisconsin Labor Code or the federal legislation. This statement is exactly the contrary of the true situation today if it be applied, as the Circuit Court of Appeals applies it, to such pressure as results from labor's own efforts to organize. It is the declared public policy, both of the United States and of the State of Wisconsin, that economic peace can only be obtained by fostering and aiding organizations of laboring men and permitting them the utmost freedom in their attempt to organize all workingmen. This is clearly expressed in the legislation. It is the background of much other modern labor legislation, and it is the public policy expressed by this court. It has become the settled doctrine that this country can not get out of its industrial turmoil and achieve conditions of industrial peace and that good order cannot be restored except by fostering labor organizations and treating with workingmen in organizations. Therefore, it is a beneficent exercise of the police power of the Government to aid labor organizations and assist them in their efforts to get all workingmen into such organizations.

"Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries v. Tri-City Central Trades Council,* 257 U. S. 184, 209. We reiterated these views when we had under consideration the Railway Labor Act of 1926. Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate collective action of employees an instrument of peace rather than of strife. We said that such collective action would be a mockery if representation were made futile by interference with freedom of choice."

National Labor Relations Board v. Jones & Laughlin Steel Corporation, 81 L. Ed. 573.

It has been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *American Steel Foundries v. Tri-City Central Trades Council,* 257 U. S. 184, 209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife.

Texas & N. O. R. Co. v. Ry. Clerks, 281 U. S. 548, 570.

"In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression."

West Coast Hotel Co. v. Parrish, 300 U. S. 379, 393.

It is clear, therefore, that statement of public policy by the Circuit Court of Appeals is erroneous.

Following the case of *American Furniture Co. v. I. B. of T. C. & H.,* supra, the Supreme Court of Wisconsin decided the case of

Senn v. Tile Layers Protective Union, Local No. 5, 222 Wis. 383, 268 N. W. 270,

and extended the doctrine of the American Furniture case by holding that a labor dispute existed, notwithstanding that all employees of the employer were satisfied, and did not wish to join the union, and that there was no dispute between the employer and his employees, and that it was sufficient ground to constitute a labor dispute that the union demanded that the employer cease to work with the tools of his trade.

It is clear, therefore, that the decision of the Circuit Court of Appeals is contrary to the law of Wisconsin, and that, therefore, it is erroneous. Irrespective of what the Circuit Court of Appeals held as to the Norris-LaGuardia Act, its decision as to the Wisconsin Labor Code is erroneous, and this in itself is ground for its reversal.

Petitioner and respondent were bound by the law of Wisconsin, and it was the duty of the Federal Court in Wisconsin to act in accordance with that law.

IV.

The Decision of the Circuit Court of Appeals is Against the Weight of Authority.

Much change has taken place in the decisions of the courts in recent years with reference to the rights of organized labor and collective bargaining. Much that was said by the courts a few years ago is not law today on this subject.

In the appendix to respondent's brief (No. 658 Oct. 1936 term) in this Court in *Senn v. Tile Layers Protective Union, Local No. 5,* supra, are listed 17 states which have passed labor codes of laws similar to the Norris-LaGuardia Act. Since that list was made Maryland passed such an Act (Md. Laws 1935 c. 574) and Pennsylvania passed a new act June 2, 1937.

The doctrine is quite well established by the decided cases today whether under the legislation referred to, or without it, that organizations of labor have the right to strike for a closed shop, or to picket peacefully without declaring a strike, and to use every means of peaceful persuasion to attempt to increase their organization, to persuade workingmen to join such organization and to dissuade the public from dealing with an employer who refuses to deal with a labor organization. It is also settled that this right to use peaceful persuasion extends at least to all those engaged in the same industry irrespective of the fact whether employees of the particular employer

have a dispute with him or not. Picketing and persuasion by labor unions for the purpose of unionizing a particular industrial establishment, is legal.

> "The purpose of a labor union to improve the conditions under which its members do their work, to increase their wages, to assist them in other ways, may justify what would otherwise be a wrong. So would an effort to increase its numbers and to unionize as entire trade or business. * * * Economic organization today is not based on the single shop. Unions believe that wages may be increased, collective bargaining maintained, only if union conditions prevail, not in some single factory, but generally. That they may prevail, it may call a strike and picket the premises of an employer with the intent of inducing him to employ only union labor. And it may adopt either method separately. Picketing without a strike is no more unlawful than a strike without picketing. Both are based upon a lawful purpose. Resulting injury is incidental and must be endured."

Exchange Bakery & Restaurant v. Rifkin, 245 N. Y. 260.

> "The modern view is that picketing is not per se unlawful, and should not be enjoined, if peaceably carried on for a lawful purpose."

Bayonne Textile Corporation v. American Federation of Silk Workers et al., 116 N. J. Eq. 146, 176 A. 551.

Steffes v. Motion Picture Operators' Union, 136 Minn. 200, 161 N.W. 524.

Kirmse v. Adler, 311 Pa. 78, 166 Atl. 566.

United Chain Theatres Company v. Philadelphia M. P. M. O. Union (Pa.), 50 Fed. (2d) 189.

S. A. Clark L. Co. v. Cleveland W. & D. Local No. 106 (Ohio) 154 N.E. 362.

Blumauer v. Local No. 159, 141 Ore. 399, 17 Pac. (2) 1115.

Cinderella Theater Co. v. Sign Writers' Local Union (D. C. Mich.), 6 F. Supp. 164.

Fenske Bros. v. Upholsterers International Union of North America, 358 Ill. 239, 193 N.E. 112.

Dean v. Mayo (La.), 8 Fed. Supp. 73.

Miller Parlor Furniture Company v. Furniture W. I. Union (N. J.), 8 Fed. Supp. 209.

Many other cases could be cited but the foregoing are fairly illustrative of the trend of modern authorities.

It will be urged by respondent that the District Court has found in its findings of fact that petitioners have gone beyond peaceful conduct. It is true that the findings of fact contain conventional accumulation of words usually included by counsel in findings of fact in cases of this kind. Thus the court finds (R. 7, (6172)-) that for the purpose of coercing complainant to require its employees to join the union, and for the purpose of injuring and destroying the business of complainant, defendants have conspired to cause and have caused false and misleading signs and placards to be placed before the markets of the complainant, and have falsely accused the complainant of being unfair to organized labor, and have prevented patrons of complainant from patronizing said markets by molestation, annoyance, threats and intimidation. The evidence, which is very brief, shows that the acts of the petitioners consisted in carrying the usual signs stating their opinion that respondent was unfair to organized labor, and that the persuasion consisted in attempting to induce the public not to deal with

respondent. There was no violence, no breaches of the peace and no necessity for the interference of peace officers. The activities were the usual ones incident to a strike or picketing.

But even though the findings of the District Court be taken as a verity and though the words used therein be taken in their broadest scope, it is submitted that the judgment of the District Court, and the injunction issued upon the same, were erroneous in law.

The judgment (R. 9, (6172)-) provides that a writ of permanent injunction issued restraining the defendants "from in any wise picketing," and "from advertising, stating or pretending that the said complainant, E. G. Shinner & Company is any wise unfair to said defendant, or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers to cease patronizing the complainant." The permanent injunction (R. 10, (6172)-) is in the same terms. Whether or not there had been acts on the part of petitioners which transgressed their rights, or the rights of organized labor, the judgment and injunction in these terms, is not warranted by the law.

> "Here, however, the excess has been noise and shouting whereby customers were frightened and crowds collected. We have never gone so far as to hold that wherever acts or words went beyond peaceful picketing, all picketing was to be enjoined."
>
> *Wise Shoe Co., Inc. v. Retail Shoe Salesmen's Union*, 266 N. Y. 264.

The same situation prevailed in—

> *Bayonne Textile Corporation v. American Federation of Silk Workers, et al.*, 116 N. J. Eq. 146, 176 A. 551.

in which the Appellate Court held that an injunction of the scope of this was not legally permitted.

It is submitted that there is nothing in the evidence of this case distinguishing it from the usual case of a labor dispute, with its concomitants of noise, excitement and some boisterousness, and that there was no basis for the general language contained in the findings. But, whether this be true or not, there was no basis in law for the prohibition against all picketing and peaceful persuasion. Therefore, the decision of the Circuit Court of Appeals in sustaining the judgment of the District Court was erroneous.

The Circuit Court of Appeals also endeavors to sustain its position, and it will no doubt be argued here by respondent, that there is a controversy here between two unions, and that the employer is not interested in this fight. This is not a fact. The attempt to put up the so called rival union as against petitioner union is the usual transparent subterfuge of the employer to divert attention from himself and seek to focus it on a straw man of his own creation.

There is no finding of fact by the trial court as to any controversy with any alleged union of the employees of the respondent. Clearly, therefore, the trial court was convinced that there was no contest between any rival union. The findings of fact both upon the granting of the temporary injunction (R. 38, (5551)-) and upon the trial (R. 6, (6672)-) definitely settled the fact that this is a contest between an employer and employee.

The respondent did try to divert attention by establishing the existence of a union amongst its own employees. That this so called union was the conventional and notor-

ious employers' own union at which the provisions of the Wagner Labor Relations Act are aimed is clear beyond question from the evidence. When the employer became aware that a labor controversy was about to be started by petitioner union to improve conditions in respondent's place of its business, and to demand the recognition of the union, it started the usual tactics of endeavoring to create a union in its own place, and this it did, as it is always done in these cases, by attempting to produce the initiative through some of its employees. Mr. Russell, the Vice-President of respondent, would not say that the union was not a countermove against the A.F.L. Union, but immediately came forward with the statement that it was formed on the request of the "boys", meaning his employees (R. 17, (5551)-). At the request of the employees, he says that he helped them start it and that the company helped form the company union, and of course, the company union, as is always the case in these controversies became a 100% union, that is, every employee of respondent belonged to it. (See testimony of Sokolowski, R. 23 (5551)-), who also describes how the union was formed at luncheons with the help of Vice-President Russell and a Mr. Anderson who was brought from Chicago by the company for the specific purpose of forming the union and providing it with constitution and by-laws. The men did not know who he was (R. 24, (5551)-) but it was afterwards stipulated by counsel for respondent that he is the secretary and auditor of the company (R. 31, (5551)-). It is clear, therefore, that this so called union is a company union and a mere sham created to fool the men and to hamper real labor organizations. Nor were the men, who suddenly became so anxious to have a labor organization, informed that a few days before the company had received the demand of the petitioner,

A.F.L. Union that it sign a union agreement. (R. 25, (5551)-), and it is quite evident that all employees knew that, in spite of the profession by respondent of the freedom of choice of labor organizations accorded the employees, that they had to belong to the company union (R. 35, (5551) testimony of Heller) to hold their jobs.

It is clear, therefore, that there is no basis for the statement of the Circuit Court of Appeals that this is a controversy between two unions. It is a labor controversy against an employer who has created for his own purposes an agency to help him defeat organized labor, that is, the company union. It is clear also that there is no analogy between this case and *United Electric Coal Co. v. Rice,* 80 Fed. (2nd) 1, in which case there were really and in truth two rival labor organizations not formed by the employer, or through his intervention, but the voluntary creation of workmen. It is, therefore, submitted that the statement by the Circuit Court of Appeals as to the existence of a dispute between rival unions in this case is not warranted by the facts and gives no support to its decision.

V.

CONCLUSION

It has been shown that the decision of the Circuit Court of Appeals strikes out from the Norris-LaGuardia Act essential provisions thereof and that by this means the entire purpose of the act is frustrated, and the intent of Congress to add to the rights of labor by this legislation, is nullified. It has also been shown that the same is true of the Wisconsin Labor Code, and that if the decision of the Circuit Court of Appeals stands as the law, this legis-

lation is ineffective and organized labor is reduced to a condition in which it found itself before this legislation was passed. It has been shown further that under the decision of the Circuit Court of Appeals the rights of labor are decreased to a point even beyond that which existed prior to the passage of the Norris-LaGuardia Act and similar legislation in many of the states of the United States. It has been shown further that the decision is contrary to the doctrine of this court, especially as announced in the Senn case. And it has been shown that the decision of the Circuit Court of Appeals is contrary to the prevailing doctrine of the courts of the country.

It is, therefore, respectfully submitted that the writ of certiorari should be granted as prayed for, and the decision of the Circuit Court of Appeals should be reviewed.

Respectfully submitted,

MORRIS FROMKIN,
Counsel for Petitioners.

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IN THE

Supreme Court of the United States

October Term, 1937

No. 293

EDWARD LAUF and AMALGAMATED MEAT CUTTERS and BUTCHER WORKMEN OF NORTH AMERICA, Local No. 73,
Appellants,

-vs.-

E. G. SHINNER & COMPANY, INC.,
Respondent

APPELLANTS' BRIEF

MORRIS FROMKIN,
Counsel for Appellants.

HAMMERSMITH-KORTMEYER CO. MILWAUKEE

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IN THE

Supreme Court of the United States

October Term, 1937

No. 293

EDWARD LAUF AND AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 73,

Appellants,

vs.

E. G. SHINNER & COMPANY, INC.,

Respondent.

APPELLANTS' BRIEF

The writ of certiorari is directed to the judgment of the Circuit Court of Appeals, for the Seventh Circuit, rendered May 13, 1937, 90 Fed. (2) 250, (T.R. 25), awarding a permanent injunction to respondent against appellants enjoining all picketing and peaceful persuasion on their part.

The judgment of the Circuit Court of Appeals was rendered in a second appeal after it had affirmed a decree of the United States District Court for the Eastern District of Wisconsin awarding a temporary injunction of the same scope as the permanent injunction. (*Lauf v. Shinner*, 82 F. (2) 68).

PROCEEDINGS BELOW

The action was commenced in the United States District Court for the Eastern District of Wisconsin by respondent against appellants upon a complaint (T.R. 29) setting forth that respondent is a Delaware corporation having its principal place of business in Wilmington, Delaware, and that it is the owner and operator of five meat markets in the City of Milwaukee, State of Wisconsin; that appellant Lauf is business manager of the appellant Amalgamated Meat Cutters and Butcher Workmen of North America, Local 73, and that Local 73 is an association of individuals; that respondent has had in its employ over 30 persons engaged in conducting the aforementioned meat markets, and that for many years its relations with its employees have been harmonious, mutually satisfactory and peaceful, and that it has paid its employees higher wages than those received by members of appellant union in other markets in Milwaukee; that it believes that none of its employees are members of appellant labor union, and that all of said employees have rejected repeated solicitations to become members of said union; that respondent has always permitted its employees to join appellant labor union, but that all of its employees upon being informed that they were free to join said union declined and refused to join said union, or to permit it to act as their representative or agent, and that said appellant union is not the union chosen by said employees to represent them in negotiating with respondent; that appellants in violation of Sec. 268.18, Wisconsin Statutes, have made demands upon respondent that it enter into a contract with appellant labor union to employ only members of said union, and to negotiate only with the duly elected officers of said union, and not to contract with anyone not affiliated with

said union, and that in violation of the rights of respondent and its employees appellants conspired for the unlawful purpose of coercing respondent to force its employees contrary to their wishes to join appellant union and accept it as their bargaining representative, and for the purpose of injuring and destroying respondent's business; that pursuant to said conspiracy continuously from April 6, 1935 appellants caused persons unknown to respondent, and none of whom were employees of respondent, to parade and picket before said meat markets during business hours bearing false and misleading signs and banners, and upon information and belief caused said pickets to create noisy disturbances, jostle and crowd respondent's customers and obstruct the entrances to said markets to prevent customers from examining meats displayed in the windows, call customers entering the markets vile names, to threaten said customers, to unlawfully accost, annoy and molest prospective customers, to falsely say and represent that respondent treated its employees unfairly in the matter of union representation, that respondent pays starvation wages and is unfair to organized labor. All of said statements made by said pickets being false and untrue, and all of said acts are done pursuant to a conspiracy and are designed to, and have the effect of preventing customers from patronizing respondent's markets; that appellants threaten to continue said acts and unless enjoined respondent will suffer irreparable injury to its business.

The complaint prays for a temporary and permanent injunction enjoining the appellants from in any wise picketing, or from representing or stating that respondent is unfair in its dealings with its employees, and from soliciting any customers to cease patronizing respondent.

Appellants answered (T.R. 36) denying that respondent paid higher wages than union members received in other markets; that respondent's employees worked longer hours than those prescribed by appellant union; denying that no employees of respondent were members of appellant union, and alleging that respondent discharged employees upon discovery that they were members of appellant union; denying that respondent's employees had rejected solicitations to become members of appellant and alleging that several employees desired to become members, and some did become members but that respondent created a company union known as the Shinner Milwaukee Employees Association, and induced its employees to join the same; that said association was created by respondent in violation of the statutes of Wisconsin, and was an organization created for the express purpose of interfering with the rights of employees to organize and bargain collectively, through representatives of their own choosing; denying that respondent permitted, or is willing to permit, its employees to join appellant union; that officers of the appellant union informed respondent that several of its employees had joined the union and others wished to join, and that appellant union had an agreement with other meat dealers regulating hours and wages, and that it wanted respondent to enter into the same agreement; that respondent refused to enter into any agreement and refused to grant its employees the terms and conditions set forth in said agreement; that there is a labor dispute between the parties as defined in the Norris-LaGuardia Act; that such dispute involves terms and conditions of employment, and that the parties are engaged in the same craft, trade and industry; denying the commission of any illegal acts; denying any conspiracy to commit unlawful acts, and alleging they have picketed in small numbers and

peacefully; that the picketing has been in accordance with the Norris-LaGuardia Act and the Wisconsin Labor Code; that conduct of appellants has been peaceful and law abiding and without any illegal interference with the rights of respondent; that officers of respondent have annoyed and abused officers, agents and members of appellant union, and have called pickets vile and indecent names.

The District Court considered the case as coming under the Norris-LaGuardia Act (29 U.S.C., Sec. 101 to 115); in that it required oral evidence to be taken in open court upon the hearing for the temporary injunction (T.R. 39 to 65).

At the conclusion of the hearing the District Court made findings of fact and conclusions of law (T.R. 66) as follows:

That respondent is a Delaware corporation and owns and operates five meat markets in the City of Milwaukee, Wisconsin, and has in its employ 35 persons in said meat markets; that none of its employees were at the time of the commencement of the action members of appellant Local 73; that appellants made demand upon respondent that it require its employees as a condition of their continued employment to become members of Local 73; that appellant notified its employees that they were free to join said union; that said employees declined and refused to join, and that said union was not the union chosen by any of said employees to represent them in any respect with respondent; that for the purpose of coercing respondent to require its employees to join said union and accept it as their bargaining representative, and for the purpose of injuring appellant's business, appellants conspired and have since April 6, 1935, caused false and misleading signs and banners to be placed before appel-

lant's markets, and have caused persons none of whom are employees of appellant to picket before said markets, and have falsely accused appellant of being unfair to organized labor with reference to its employees, and have prevented patrons from patronizing said markets by molestation, annoyance, threats and intimidation; that respondent will suffer irreparable injury unless appellants are restrained from said conduct; that there is no labor dispute between appellants and respondent.

The conclusions of law upon the foregoing findings of facts, are:

That respondent is bound by the terms of 29 U.S.C., Sec. 102 and Secs. 268.18 and 268.19, Wisconsin Statutes to permit its employees free agency in the matter of choice of a labor union to act as their representative; that respondent is entitled to the injunction.

Upon the foregoing findings of fact and conclusions of law an injunction pendente lite was issued (T.R. 69) enjoining appellants from in any wise picketing the markets of respondent; from seeking in any manner to coerce respondent to discharge its employees because they do not choose to join Local 73; from attempting to coerce respondent to compel its employees to join Local 73 and accept it as their bargaining representative; from advertising, stating or pretending that respondent is in any wise unfair to appellants or organized labor generally, and from annoying, molesting, persuading or soliciting any customers to cease patronizing respondent's markets.

An appeal was taken from the order awarding this injunction to the Circuit of Appeals for the Seventh Circuit which affirmed the District Court, 82 F. (2) 68.

The opinion of the Circuit Court of Appeals is based upon the premise, that:

"No strike or dispute between employer and employee is here involved,"

and the court states the issue involved upon the appeal to be whether a labor union not representing any employees of a business can lawfully picket that business and injure it for the purpose of compelling the employer to accept the union as the sole bargaining agent of his workmen over their protest, and to the exclusion of the agency which the employees in the exercise of their free choice have unanimously selected.

The court quotes Sec. 101, Title 29 (see appendix) and Sec. 102 and underscores the following:

> " * * * though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, * * * and designation of representatives of his own choosing, * * * free from the interference, restraint, or coercion of employers * * * in the designation of such representatives, * * * "

and states further, that Sec. 104 enumerates the specific acts which may not be restrained quoting the section. The court further quotes Sec. 107 containing the specific restraint on federal jurisdiction with reference to injunctions in labor disputes, and Secs. 108 and 109 containing further limitations. The court then quotes Sec. 113 containing the definitions of the terms used in the act.

It is stated in the opinion that the provisions of the Wisconsin Labor Code are substantially the same as the provisions of the Norris-LaGuardia Act and that part of Sec. 103.51, Statutes of Wisconsin (see

appendix) announcing the public policy that the employee shall be free from the employer's restraint in choosing representatives and in self-organization is quoted.

On the basis of its previous decision in *United Electric Coal Co. v. Rice et al,* 80 F. (2) 1, the court holds that no labor dispute is involved in the present case, and says, that the labor dispute defined by the Norris-LaGuardia Act does not include disputes between employes, or between employe unions. The court says that the real controversy in this case is between two unions as it was in the Rice case, but that the present case is stronger, because none of respondent's employees is a member of appellant union, and that the employer is not engaged in the labor dispute with anyone, but that the controversy is rather a unilateral one to coerce respondent to compel its employees to join appellant union; that it would amount to a violation of both the Norris-LaGuardia Act and the Wisconsin Labor Code if respondent complied with appellants' demand, because under these laws the employer is specifically enjoined from influencing his employees in their choice of a union or representative; that respondents' employees have refused to join appellant's union, have organized their own union without interference of their employer, and their rights in this respect are protected by both laws.

The court further states, that the public policy of the nation and the State of Wisconsin establishes the substantive rights of respondent's employees which the courts will protect even without specific provision in the acts; that since it is unlawful for respondent to dictate to its employees what organization they should join, and what representatives they should choose, and

likewise unlawful to refuse to recognize the agency which they have selected, appellants' demand upon respondent was unlawful, and quoting from *Truax v. Corrigan,* 257 U.S. 312, the court concludes that appellants' conduct is a tort and should be enjoined.

The court says, that appellants' contention that they may attain their ends by picketing at any time or place, does not follow from any fair construction of the statute; that there must be a cause for such interference with business, and that here there was no semblance of such cause, because there was no labor dispute since the relationship of employer and employee did not exist.

Referring to the case of *American Foundries v. Tri-City Council,* 257 U. S. 184, the court says, the union's right to increase its membership is not questioned, but that the law is not a warrant for illegal interference with the rights of the non-union man, and that the court cannot think that Congress or the Wisconsin Labor Code intended to increase the union's rights in this respect.

Upon this basis the court concludes that it was not incumbent upon the District Court before issuing injunctive relief to make the findings that unlawful acts had been committed, etc., as provided in the Norris-LaGuardia Act, and that since there is no labor dispute, the statutes have no application.

Following this decision the case was tried on the merits in the District Court, a small amount of additional evidence being taken (T.R. 2). It was stipulated that the testimony taken upon the hearing of the

preliminary injunction should stand as testimony upon the trial.

The District Court again made and filed findings of fact and conclusions of law (T.R. 6) which are identical with the findings of fact and conclusions of law made upon the hearing for preliminary injunction, and issued a writ of permanent injunction (T.R. 10) identical with the preliminary injunction.

From the final decree awarding this injunction, appeal was again taken to the Circuit Court of Appeals for the Seventh Circuit. It was stipulated that the record upon the previous appeal be considered a part of the record on the second appeal, and an order to this effect was allowed by the Circuit Court of Appeals (T.R. 1).

After the hearing upon the second appeal, the Circuit Court of Appeals decided that its decision upon the previous appeal was correct, and should be followed (T.R. 25; 90 F. (2) 250).

A motion for rehearing was made after the decision in *Senn v. Tile Layers Protective Union, Local No. 5,* 301 U. S. 468, 81 L. Ed. 829, 57 (16) S.C.R. 857; by this court, which motion was denied.

APPELLANTS' CONTENTIONS

I.

The case involves a labor dispute within the terms of the Norris-LaGuardia Act, 29 U.S.C. 101 to 115.

II.

The Norris-LaGuardia Act was intended to and does broaden the rights of organized labor as set forth in the Clayton Act and interpreted in *American Steel*

Foundries v. Tri-City Central Trades Council, 257 U. S. 184.

III.

Peaceful picketing and peaceful persuasion were legal conduct under the facts in this case.

IV.

The case involves a labor dispute within the terms of the Wisconsin Labor Code, Wisconsin Statutes 1935, 103.51 to 103.63, and the acts of appellants in this case are expressly legalized by that act.

V.

The constitutionality of the Norris-LaGuardia Act is beyond question and has been decided by this court.

VI.

The decision of the Circuit Court of Appeals is not in accord with existing law.

VII.

The decree of the District Court awarding the injunction without the findings of fact required by the Federal and Wisconsin Statutes, was without jurisdiction and the decision affirming it is erroneous.

ERRORS ASSIGNED

The court erred in:

1. Holding that there was no labor dispute.

2. Holding that the Norris-LaGuardia Act did not apply.

3. Restraining appellants from all picketing and all peaceful persuasion and from conveying information that respondent is unfair to organized labor.

4. Holding that the Wisconsin Labor Code does not apply.

5. Awarding the injunction.

6. Holding that respondent need not comply with 29 U.S.C. 101 to 115, and Wisconsin Statutes, Sec. 103.56, which are conditions precedent to injunctive relief, and that the trial court need not make the findings required by said statute.

SYNOPSIS OF ARGUMENT

Sections of Acts involved 15

Section 4 of the Act takes away jurisdiction to issue injunctions 15

Enumerates the following which may not be enjoined: giving publicity to labor dispute, assembling peaceably to act in labor dispute, advising anyone of intention to do said acts 15

29 U.S.C. 113 (c) expands labor dispute to include controversies concerning condition of employment or association of persons in negotiating terms or conditions of employment regardless of proximate relation of employer and employe 15

29 U.S.C. 113 (a) broadens scope of definition of labor dispute 16

113 (b) further defines scope of labor dispute..... 16

Sec. 4 of Norris-LaGuardia Act clearly takes away jurisdiction of Federal courts to issue labor injunctions 17

Of three possible definitions of labor dispute the one necessary to the decision of this case, that is,

that it includes employers and employees in the same industry is clearly within the intent of Congress 17

This intent of Congress is further shown by recent history of labor legislation 25

History of the Norris-LaGuardia Act also shows the correctness of this definition 26

Decision of Circuit Court of Appeals that no labor dispute exists, is wrong 29

Important parts of statute are deleted by Circuit Court of Appeals 30

This court has settled question that there is a labor dispute in this case by decision in Senn v. Tile Layers Union 30

That decision based on Wisconsin Labor Code is conclusive on parallel provisions of Norris-LaGuardia Act 31

Decision of Circuit Court of Appeals likewise contrary to the decisions of this court in Virginia Railway v. System Federation and National Labor Act cases 33

Decision of Circuit Court of Appeals that the preamble of the Norris-LaGuardia Act and Wisconsin Labor Code warrants its decision, is erroneous 34

Interpretation of preamble by the Wisconsin Supreme Court, is correct 35

Only coercion by employer is prohibited 36

Public policy of Wisconsin and the United States is to prevent employer's coercion 37

Picketing and persuasion are not torts 41

Decision in Circuit Court of Appeals that they are wrongful, is erroneous 42

Constitutionality of Norris-LaGuardia Act is not an open question 43

Only Sec. 2 of Article III of the Constitution is involved 43

There is no question under the Fifth Amendment.... 44

Senn v. Tile Layers Union determined question of constitutionality of State Act under Fourteenth Amendment, and same would apply to Fifth Amendment, but Norris-LaGuardia Act does not create or abolish substantive rights 45

The Circuit Court of Appeals for the Seventh Circuit stands almost alone in its position on the questions involved in this case 46

The law in most jurisdictions is settled, either under legislation or without it, that picketing and persuasion in cases such as the present are legal..... 47

The decree of the District Court without making the findings required by the Norris-LaGuardia Act was without jurisdiction 50

The findings of fact required by the Act are conditions precedent to the issuance of injunctions 50

Hence the judgment of the Circuit Court of Appeals affirming the decree of the District Court, is erroneous 51

ARGUMENT

I.

THE CASE INVOLVES A LABOR DISPUTE WITHIN THE TERMS OF THE NORRIS-LAGUARDIA ACT, 47 STATS. 70, 73, 29 U.S.C. 101 to 115

A. Sections of Act Involved.

Sec. 4 of the Norris-LaGuardia Act, 29 U.S.C. 104 (see appendix) provides:

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are hereinafter defined) from doing whether singly or in concert, any of the following acts,"

and enumerates, among other things which may not be enjoined, the following which apply specifically to the present case:

> "(e) Giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking or patrolling;
>
> (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
>
> (g) Advising or notifying any person of an intention to do any of the acts specified."

Pursuant to the reference in Sec. 104, the term "labor dispute" is defined in 29 U.S.C. 113 (c) in detail in language leaving no doubt as to the intent of Congress in the use of the term, as follows:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employ-

ment, or concerning the association or representatives of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

The act provides further, 29 U.S.C. 113 (a) that:

"A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interest therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employer; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involved any conflicting or computing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined)."

And further enumeration analyzing "labor dispute" is contained in 29 U.S.C. 113 (b) that:

"A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation."

B. Jurisdiction to Issue Injunctions Limited.

Sec. 4 of the act, (29 U.S.C. 104) is clear beyond dispute and requires no interpretation by the courts, except as to the term "labor dispute." It takes away a part of that jurisdiction of the Federal courts which was granted by Congress, and which they derive only from the acts of Congress. Its terms are definite to this effect. The provision that:

> "No court of the United States shall have jurisdiction"

makes it clear beyond question that Congress intended definitely and beyond doubt to revoke the jurisdiction or power of the Federal courts to issue injunctions in labor disputes. It is not an attempt to alter procedure, but a definite abolition of a part of the equity jurisdiction of the Federal courts. The entire question of the scope of the section, and the extent of the abolition of jurisdiction of the courts, rests upon the definition of the words "labor dispute."

C. Interpretation of "Labor Dispute".

If Sec. 4 stood alone and no further definitions were given in the act, three possible interpretations of the words "labor dispute" would be open to the courts: 1, that it includes only controversies between an employer and *his* employees; 2, that it includes controversies between employers and employees in the same industry; 3, that it includes controversies between employers and any employees or workingmen.

That the first interpretation is not the one intended by Congress and is entirely too narrow to carry out the intent of Congress, is beyond doubt from the internal evidence, that is, the express language of the

act itself. Thus, Subsection (c) of Sec. 13, 29 U.S.C. 113 after the very comprehensive and inclusive language that a labor dispute is any controversy concerning terms or conditions of employment, or the association or representation of person in negotiating such terms and conditions of employment, contains the very definite enlarging terms that such a controversy is a labor dispute regardless of whether or not the disputants stand in the proximate relation of employer and employee. It is significant in the first place that Congress did not use the conventional and familiar terms in stating what shall be included in a labor dispute, such as "wages", "hours", etc., which had commonly been used in previous legislation, but definitely broadened the scope of the subject matter of the act by using the most comprehensive and inclusive term, that is, terms or conditions of employment. But to avoid all ambiguity, and to make its intent that the scope of the primary term "labor dispute" should be as broad as possible, definitely clear, it added the words at the end of the section that the contestants need not stand in the proximate relation of employer and employee. This eliminates the first of the definitions above stated, that is, that a labor dispute is limited to a controversy between an employer and *his* employees.

That this is true further follows clearly from subdivision (a) which provides that a labor dispute is involved when the persons are engaged in the same industry, craft or occupation. It is clear that if Congress had meant that a labor dispute existed only when the controversy is between an employer and his employees, this clause would not appear in the act. These words definitely broaden the scope of the term to include any controversies between employers and work-

men in the same industry or craft notwithstanding that such employees are not, and have not been, employees of the employer with whom they have the controversy. This language would clearly indicate the second definition given above.

But subsection (a) of Sec. 13, goes much farther in extending the scope of the term "labor dispute." It is notable that the several clauses of this subsection are in the disjunctive, and therefore clearly indicate that when the conditions described in any one of them are present, there is a labor dispute whether the conditions in any of the other clauses are present or not. The second clause of the subsection provides, that a controversy is a labor dispute when the persons involved have direct or indirect interests in the trade, craft or industry involved in the controversy. This clearly indicates the intent of Congress to adopt the third definition given above, that is, there is a labor dispute when any workingmen have a controversy with any employer, because clearly every working man has at least an indirect interest in every trade, craft or industry other than his own.

The third clause of the subsection refers to persons who are employees of the same employer, and if standing alone, would indicate definition No. 1 above.

The fourth clause of the subsection includes in a labor dispute a controversy between persons who are members of the same or affiliated organizations of employers or employees. This cannot mean other than if there is a controversy between any employer and any labor union belonging for instance to the American Federation of Labor, that is a labor dispute between such employer and all members of the American Federation of Labor, or if there is a controversy between an employer who is

a member of a National Chamber of Commerce or Merchants and Manufacturers Association, and his employees, there is a labor dispute between all members of such Manufacturers Association or Chamber of Commerce, and said employees. This definitely points to definition No. 3 above.

To make the matter absolutely clear Congress added in the same subsection words modifying all of the foregoing clauses, and providing that any one of the clauses defines a labor dispute, whether such dispute is (1) between one or more employers or associations of employers, and one or more employees or associations of employees. Thus a controversy between persons engaged in the same industry, or having a direct or indirect interest therein, or who are members of the same or affiliated organizations of employers or employees, (2) between one or more employers or associations of employers, and one or more employers and associations of employers, or (3) between one or more employees or associations of employees, and one or more employees or associations of employees. This explanatory language clearly contemplates disputes between employers or their associations, or between employees or their associations. The language is very significant in view of the statements of the Circuit Court of Appeals in this case that a controversy between rival labor unions takes the case out of the terms of the Norris-LaGuardia Act. While the present case presents no situation of controversy between rival independent labor unions, clearly if it did, Congress intended that it should still be within the terms of the act, and that no injunction should issue prohibiting the acts enjoined in this case. Therefore, even if the premise of fact of the Circuit Court of Appeals were correct, which it is not, its interpretation of the act as not including the present controversy would be definitely erroneous.

At the end of the subsection Congress has added an omnibus clause including in the term "labor dispute" any case involving any conflicting or competing interests of persons participating or interested therein. The language cannot mean anything except that a case involves a labor dispute when the parties are in competition either remotely or directly, or when their economic interests are in conflict with each other. This clearly contemplates any controversy between workingmen and employers in whatever industry the one or the other may be engaged, because every working man is in competition with every employer, and with every other working man in the sale of his labor, and he is in conflict with every employer in that he is trying to obtain as much as he can for the only thing that he has to sell, that is, his labor. There can be no doubt in the face of this language that "labor dispute" as used by Congress in the act was intended to mean what is set forth in definition 3 above.

By way of repetition and apparently to add further emphasis, in subdivision (c) Congress again provides that labor dispute shall include any controversy concerning terms and conditions of employment, or concerning the association or representation of persons in negotiating, or seeking to arrange terms or conditions of employment, and adds to the section the very definite and clear language which eliminates definition No. 1 above — "whether or not the disputants stand in the proximate relation of employer and employee". This language could have but one purpose, and that is, to prevent the very sort of construction of the term "labor dispute" which the Circuit Court of Appeals has given in this case.

It seems clear from the many clauses which have been discussed that Congress intended that "labor dispute" as used in the act should include any controversy between

workingmen and employers concerning their economic interests. It is also clear that the term was intended to include controversies between employees or labor unions. While the foregoing seems clear beyond reasonable doubt, the present case does not require the broadest definition of the term "labor dispute." The facts in the present case present a situation where employees or workmen in the same craft or industry have initiated and are carrying on a controversy with an employer likewise in the same industry. Appellants are all butcher workmen, respondent is engaged in the butcher or meat industry. Both sides are therefore in the same craft or industry. While it may be admitted that none of respondent's employees are members of appellant union, under definition No. 2 the controversy presents a labor dispute without question. There is here a controversy between those who are in competition with each other in the same craft or industry. It is not necessary therefore for this court to hold, what apparently was the intent of Congress, that any controversy between workingmen and employers of any kind, whether in the same industry or not, concerning terms and conditions of employment, is a labor dispute, but certainly, in the face of the repeated statements in the act, and the restatement in various forms of the thought, the court cannot avoid holding that a labor dispute is present when workingmen in the same craft or industry have a controversy with an employer in the like craft or industry, even though these workingmen are not employees of ex-employees of the employer.

A recent article discussing these sections is pertinent, Vol. L, No. 8, Harvard Law Review (June 1937), at pages 1297, 1298, 1299:

> "The majority of cases testing these provisions have given them full scope and effect. One of the

first problems to arise concerned picketing which had unionization, rather than any immediate improvement of conditions as its object. In *Levering & Garrigues Co. v. Morrin,* where some of the complainants' employees were members of the union, no controversy existed as to hours or wages, the activities of the union being directed toward the closed shop. The court declared that a labor dispute existed, since the union, in attempting to bring about a closed shop was 'seeking to arrange terms or conditions of employment', as described in Section 13. Even where no employees were members of the union the same result has been reached. To the argument made in *Cinderella Theatre Co. v. Sign Writers' Local Union,* that no labor dispute could exist since the single employee involved was content with existing terms of employment, the court replied that both the express terms of the statute and Congressional committee reports made it clear that the agitation parties could be other than employees. Later decisions likewise found it evident that under the Act a labor union desirous of unionizing a business could 'force' a labor dispute upon an employer and his non-union and uncomplaining employees.

"The trend begun by these decisions, however, was seriously disturbed by a group of cases decided by the Circuit Court of Appeals for the Seventh Circuit. In *Lauf v. E. G. Shinner & Co., Inc.,* it was held that no labor dispute existed under the Norris-LaGuardia Act when a labor organization picketed to unionize a non-union shop. Emphasizing the fact that no employee was a member of the union, the court reiterated its conclusion, reached in an earlier decision, *United Electric Coal Companies v. Rice,* that the term 'labor dispute' as used in the Norris-LaGuardia Act implied a controversy concerning wages and conditions of employment, and one which was between employer and employee or arising directly out of that relationship. This conclusion had

already been applied in *Newton v. Laclede Steel Co.* where, apparently some of the employees of the complainant were among those agitating for unionization.

"These decisions, flatly opposed to the terms of the statute, have been condemned as duplicating the restrictive treatment afforded the Clayton Act. Subsequent cases, however, arising under almost identical state acts, have shown no inclination to follow them. A recent Wisconsin case, in a careful and what promises to be an influential opinion, held the anti-injunction statute applicable to the situation where a shop of non-union and allegedly satisfied employees is subjected to unionization activity. Tracing the limited application given the Clayton Act and reciting the reforms intended by the present type of statute, the court declared that, in spite of the *Rice* and *Lauf* cases urged by the dissenting judges, it could not disregard the plain language of the statute and the legislative purpose and history behind it. On similar facts the Oregon court has reached the same result, likewise overriding a dissent based on the decisions of the seventh circuit. And a recent federal decision illustrates another method of dealing with these precedents. Apparently with the language of the *Rice* case in mind, a labor organization wishing to effect a closed shop induced two employees to join it, and then, after a perfunctory demand for higher wages, commenced its picketing activity. The court pointed out that since the controversy thus involved employer and employees and concerned problems of hours and wages, it need not choose between the *Rice* and *Lauf* cases on the one hand, and the opposing decisions of the other federal courts on the other.

"A second major problem concerning the applicability of the Act is presented when more than one union is involved in the controversy. The activity sought to be enjoined there arises out of rivalry as

to which of two hostile organizations shall represent the workers. If one of the rivals is a *'company'* union, the situation is hardly distinguishable from that already considered, for it is still union recognition that is demanded of the employer."

D. Historical Background of the Act.

In addition to the internal evidence in the language of the act itself, the history of labor legislation in Congress clearly demonstrates that the position here taken is correct, and that Congress intended, at least such a definition of the words "labor dispute" as would include the present controversy. The Clayton Act passed October 15, 1914 (38 Stats. 738), was the result of a long campaign by organized labor to obtain liberal legislation permitting greater rights in picketing and persuasion in strikes and labor controversies, and to restrict the courts in frustrating such labor disputes by injunctions. The hopes of organized labor based on this act were destroyed by the decision of this court in

American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184.

in which this court held that notwithstanding the Clayton Act workingmen who were neither employees nor ex-employees could be enjoined from picketing and other incidental activities in a labor controversy. It was held that while employees and ex-employees, and members of a labor union of such employees and ex-employees could not be enjoined from peaceful picketing, persuasion, etc., other workingmen, even in the same craft or industry could be so enjoined.

Organized labor started on another campaign to obtain legislation eliminating the limitations of this decision.

(72nd Congress, Senate Report 163, Feb., 1932). After long effort to persuade Congress to extend the scope of its labor legislation, this was finally accomplished in the Norris-LaGuardia Act. There can be no question but that the sole purpose of the act was to change the law as it had been laid down in the above case, that is, that at least all those engaged in the same industry or craft could use the usual peaceful weapons of organized labor against an employer, whether they were his employees, or ex-employees or not. That is really the sole advance so far as organized labor is concerned of the Norris-LaGuardia Act.

The history of the specific legislation discloses that Congress intended exactly this broadening of the scope of the act.

E. History of Norris-LaGuardia Act.

"In the first session of the 70th Congress, Senator Shipstead of Minnesota, introduced a bill similar to the Norris-LaGuardia bills, entitled "A Bill to Amend the Judicial Code and to Define and Limit the Jurisdiction of Court sitting in Equity and For Other Purposes." The bill was referred to the Senate Judiciary Committee, and the language of the section defining a labor dispute is almost precisely the same as that contained in the present Norris-LaGuardia Act. Hearings were conducted on the bill on February 8, 9, 10, 11, 14, 16, 17, 18, 21, 22, 23, 24, 25 and 28, and March 1, 7, 10, 13, 15, 16, 20, 21 and 22, and December 18, 1928, before a Sub-Committee composed of Senators Norris of Nebraska, Blaine of Wisconsin, and Walsh of Montana. Among the witnesses at the hearing were Senator Shipstead, Andrew Furuseth, President of the International Seamen's Union of America, William Green, President of the American

Federation of Labor, John T. Frey, Secretary-Treasurer of the Metal Trades Department of the American Federation of Labor, Frank Morrison, Secretary, American Federation of Labor, Morris L. Ernst, representing the American Civil Liberties Union, New York City, Alfred P. Thom, General Counsel for the Association of Railway Executives, Alex J. Groesbeck, Governor of Michigan, W. H. Latta, Representative of the Indianapolis Street Railway Company, Albert Ward, U. S. District Attorney for Indiana, Walter Gordon Merritt, representing the League for Industrial Rights, Leon B. Lanfrom, lawyer, representing the Milwaukee Employers' Council and the Wisconsin Manufacturers Association, William P. Belden, counsel for Ohio Coal Operators Association and James A. Emery, counsel, National Association of Manufacturers and National Founders Association. That bill met with indifferent success, until the beginning of the first session of the 72nd Congress, when Senator Norris introduced Senate Bill No. 935, which bill carried the same title as the Shipstead Bill and was referred to the Senate Judiciary Committee.

Upon December 10th, 1931, Representative Fiorello H. LaGuardia introduced House Resolution 5315 and it was referred to the House Committee on Judiciary.

Upon February 4th, 1932, Senate Bill 935 was reported with amendments and with the statement "that extensive and unlimited public hearings" had been held upon the same subject in the 70th Congress on the Senate Bill of Senator Shipstead; the minority views of the committee expressed by Senator Hebert, was submitted and signed by Senators Hastings, Austin, Stephens and qualifiedly by King. The bill was debated in the Senate upon February 16, 23, 24, 25, 26 and 29, and March 1, 1933,

and passed by the Senate on that date, by a roll call vote of yeas—75, nays—5, with sixteen members of the Senate not voting.

The legislative history of House Resolution 5315 is as follows:

February 25th, 1932, hearings were held before the Committee on Judiciary; March 2nd, 1932, the bill was reported with amendments by Mr. LaGuardia; March 8, 1932, House Resolution 5315 was made a special order of business of the House of Representatives, was debated, amended and passed the House by a roll call vote of yeas —363, nays—13, and not voting—56.

Upon March 9th, 1932, House Resolution 5315 was debated, amended and passed by the Senate, the Senate insisting upon its amendment and asking a conference. On the same date the Conferees, Senators Norris, Blaine, and Walsh of Montana, were appointed; March 10th, 1932, the House of Representatives disagreed to the Senate amendment and agreed to the requested conference. The House Conferees, Representatives Summers, Montague and Dyer, of Missouri, were appointed; and upon March 14th, 1932, the conference report was submitted to the House and to the Senate.

Upon March 16th, 1932, the bill was re-committed to the Committee of Conference and upon the same day the conference report was withdrawn in the Senate. The conference report was agreed to in the House and submitted to the Senate upon March 17th, 1932, and upon March 18th, the Senate gave its approval thereto. The bill was examined and signed by the Speaker of the House upon March 19, 1932, and the bill signed by the Vice-President March 21st, 1932. It was presented to President Hoover March 22nd, 1932 and approved March 23, when it became law.

Before its approval by the President, the Chief Executive requested the opinion of the Attorney General of the United States, who recommended that the bill receive Executive approval."

It appears from this detailed analysis of the Act's legislative history, that it was recognized by an overwhelming majority of both branches of the Congress to be remedial legislation of great demand; that it received close and painstaking investigation and analysis after exhaustive hearings and debates in both branches of the Congress and was fully understood in all of its ramifications by both the executive and legislative branches of the government.

It is clear, therefore, both from the express and unambiguous language of the Norris-LaGuardia Act, as well as from the history of labor legislation in recent years, and from the history of the bills and resolutions which preceded the Norris-LaGuardia Act in Congress, that the legislation was meant to include a case such as the present under the term "labor dispute."

The categorical imperative of the Circuit Court of Appeals that—

"no strike or dispute between employer and employee is here involved"

which is the premise upon which its decision rests, is wrong.

Whether it be considered that a situation such as exists in this case is a strike or not, as has been shown it is clearly a labor dispute within the federal legislation. A strike is a labor dispute, but to avoid troublesome questions of definition Congress has used the more explicit broader term.

F. Deletion of Statute.

The decision of the Circuit Court of Appeals not only plainly misinterprets the Norris-LaGuardia Act, but deletes from the statute several important clauses. Thus several subdivisions of subsection (a) of Sec. 113 are necessarily eliminated if the present controversy is held not to be a labor dispute. The same is true of some of the clauses in subsection (b), and the very important clause at the end of subsection (c) "regardless of whether or not the disputants stand in the proximate relation of employer and employee," cannot possibly be considered to be still in existence if the present controversy is held not to be a labor dispute.

It is submitted that this is abrogation of the law, as well as misconstruction, and that a court has no right to deal thus with the acts of a legislative body. It is submitted that this court should give effect to the clear and unambiguous language of the act, and should refuse to sanction any elimination of any part of the law which clearly expresses the intent of the representatives of the people.

G. Question Settled in This Court.

The question at issue is no longer an open one in this Court. On May 24, 1937, in the case of

Senn v. Tile Layers Protective Union, Local No. 5, 301 U. S. 468, 81 L.Ed. 829, 57 (16) S.C.R. 857

this Court decided that a labor union could not be enjoined from picketing in a case in which the only question at issue was whether the employer should be permitted to work at the trade himself, and that such picketing could not be enjoined by the court, although none of the employees of the particular employer who was being

picketed were members of the labor union which was doing the picketing, and although there was no dispute between the employer and his employees. With reference to the particular question at issue here, the Court says, in the majority opinion by Justice Brandeis:

> "The unions acted, and had the right to act as they did, to protect the interest of their members against the harmful effect upon them of Senn's action * * * Because his action was harmful *the fact that none of Senn's employees was a union member or sought the union's aid was and is immaterial.*"
>
> "The law of Wisconsin as declared by its highest court permits unions to endeavor to induce an employer when unionizing his shop to agree to refrain from working in his business with his own hands—so to endeavor, *although none of his employees is a member of the union.*"
>
> "Each member of the unions, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through the exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent upon securing work, and securing work is dependent upon public favor. To win the patronage of the public each may strive by legal means." (Italics ours.)

The decision was rendered with reference to the Wisconsin Labor Code, Secs. 103.51 to 103.63, Wisconsin Statutes, 1935, but the provisions involved are identical with the provisions of the Norris-LaGuardia Act. Thus, the definition of "Labor Dispute," Wisconsin Statutes, Sec. 103.62(3) is identical with the definition in Sec. 113, Title 29 (c), and the language describing a labor dispute, Statutes of Wisconsin, Sec. 103.62(1) (2), is identical with Sec. 113, Title 29 (a) (b). Therefore, the decision of this court is a decision as to the question involved under the Norris-LaGuardia Act.

It follows that what was sustained under the Wisconsin Labor Code as peaceful and legal conduct, must likewise be sustained under the Norris-LaGuardia Act, the parallel Federal Statute.

The facts in the Senn case go much farther than the facts in the instant case, and require an interpretation of the provisions of the Labor Code much broader than is contended for by petitioners. The Senn case extended the doctrine of

American Furniture Co. v. I. B. of T. C. & H. of A., 222 Wis. 338, 268 N. W. 250.

The facts in the latter case were exactly parallel to the facts in the present case, that is, the union was striving to unionize plaintiff's shop in spite of the fact that none of his employees were members of the union. In the Senn case, the union not only insisted on unionizing Senn's shop, although his men were not members of the union, but demanded that he himself cease working with the tools of his trade. Upon these facts this Court held that the union had the right to picket and use all means of peaceful persuasion to bring about the desired result. It is, therefore, submitted that there can be no question but that the law is settled in this Court that appellant union has the right to picket in a case such as the present. Therefore, the decision of the Circuit Court of Appeals is not in accord with the law as laid down by this Court.

It is submitted that even the dissenting Justices of this Court in the Senn case clearly recognize the right of a union to picket under circumstances such as exist in the present case. The dissenting opinion says:

> "It may be assumed that the picketing, upheld in virtue of the challenged statute, lawfully might be employed in a controversy between employer and employees for the purpose of persuading the employer to increase pay, etc., and dissuading non-union

workers from displacing union members. The right of workers, parties to a labor dispute, to strike and picket peacefully to better their condition does not infringe any right of the employer."

And on page 6, Justice Butler says:

"The contest is not between unionized and other contractors, or between one employer and another. The immediate issue is between the unions and plaintiff in respect of his right to work in the performance of his own jobs. * * * Between union members and plaintiff there is no immediate or direct competition. * * * The interest of the unions in the manual labor done by the plaintiff is so remote, indirect and minute, that they have no standing as competitors. Under the circumstances disclosed here, the conduct of the unions was arbitrary and oppressive."

It is clear from Justice Butler's opinion that the dissent is based solely on the fact that the defendant union was not in competition with the employer who sought to work at the trade himself, and that for this reason alone the picketing was unlawful. It follows that if the union had been picketing because it was in competition with the employees of the employer whom it was picketing, the picketing would be lawful. Here, the appellant union is composed of butcher workmen in competition with the butcher workmen employees of respondent, and consequently the picketing is lawful, even within the reservations of the dissenting opinion in the Senn case.

The decision of the Circuit Court of Appeals was likewise out of accord with the decisions of this court in

Virginia Railway Co. v. System Federation No. 40, 81 L.Ed. 470, 299 U.S. 529.

National Labor Relations Act Cases, 301 U.S. 1, 49, 58, 103, 142; 81 L.Ed. 563, 585, 603, 108, A.L.R. 1352.

IV.

THE CASE INVOLVES A LABOR DISPUTE WITHIN THE TERMS OF THE WISCONSIN LABOR CODE, WISCONSIN STATUTES, 1935, 103.51 TO 103.63, AND THE ACTS OF APPELLANTS IN THIS CASE ARE EXPRESSLY LEGALIZED BY THAT ACT

The second ground which the Circuit Court of Appeals assigns for its decision is, that by the preamble of the Norris-LaGuardia Act and the preamble of the Wisconsin Labor Code, the employees' right to free organization is guaranteed, and that the acts of appellants are in violation of such right, and therefore the object to be attained by them is unlawful, is involved with its decision upon and its interpretation of the Wisconsin Labor Code, and is therefore here treated in connection with that subject.

A. Object Not Unlawful.

As has been stated, the decision of the Circuit Court of Appeals holds that the object to be attained by picketing and persuasion is unlawful, and that, therefore, the acts of picketing and persuasion are unlawful.

Sec. 103.53, Statutes of Wisconsin, 1935, (See appendix), provides, somewhat differently than the parallel provision of the Norris-LaGuardia Act, that the specific acts enumerated, whether performed singly or in concert, *shall be legal*. The enumerated acts include, giving publicity to, or communicating information regarding the existence of or the facts involved in any dispute, whether by advertising, speaking; patrolling any public street or any place where any person or persons may lawfully be; assembling peaceably to do any of the acts specified; ad-

vising or notifying any person or persons of an intention to do any of the acts specified; advising, urging or inducing others to do the act specified; peaceful picketing or patrolling, whether engaged in singly or in numbers. The parallel section of the Norris-LaGuardia Act, 29 U. S. C. 104 does not provide in the same language that such acts are legal, but takes away the jurisdiction to issue injunctions against them, nor does it contain the extra and specific provision contained in 103.53 Wisconsin Statutes (1) as follows:

> "Peaceful picketing or patrolling, whether engaged in singly or in numbers, shall be legal."

It is clear from the foregoing quotation of the language of the Statutes of Wisconsin that the legislature has made the acts here enjoined legal acts if they were not so before the enactment of the statute. This court held in

Senn v. Tile Layers Protective Union, supra,

under Point Second, that by virtue of the statute such acts were legal. The court says, under Point Third,

> "That the members of a labor union might, without special statutory authorization by a state make known the facts of a labor dispute for freedom of speech is guaranteed by the federal constitution."

It is submitted that in view of this provision of the statute of Wisconsin, the decision of the Circuit Court of Appeals to the effect that the means here employed, that is, the picketing and persuasion, were unlawful, is clearly erroneous.

In

American Furniture Co. v. I. B. of T. C. & H. A. Local No. 200, 222 Wis. 338, 268 N. W. 250,

the Supreme Court of Wisconsin decided a case involving exactly the same situation as exists in the present case. In that case none of the employees of the plaintiff were members of the defendant union which picketed plaintiff's place of business, and the employees had all voted on two separate occasions unanimously that they did not want to join the union and were satisfied with their conditions of employment. There was absolutely no dispute therefore between the employer and his own employees. The question as to whether under these circumstances there was a labor dispute within the meaning of the Wisconsin Labor Code, and the Norris-LaGuardia Act, was the principal issue in the case. The court says (222 Wis. 347):

> "Upon these facts, the question is squarely presented whether there was a labor dispute involving plaintiff and defendants in view of the fact, (1) that no employee of plaintiff was a member of defendant unions; (2) that none desired or was willing to become a member; (3) that the employees were wholly satisfied with the conditions of their employment; (4) that the employees opposed the execution of the contract proposed for plaintiff's execution; (5) that plaintiff has been unwilling to coerce its employees to join the unions, and has throughout been willing to take such position in that respect as its employees desired."

Upon this state of facts, the court decided, after careful analysis of the statutes and their historical background that there was clearly a labor dispute and refused to enjoin the union from picketing and peaceful persuasion. The court shows that the acts sought to be enjoined are legalized by the statute, and that the jurisdiction of the courts to proceed by equitable relief, was clearly intended to be taken away.

The decision is squarely contrary to the decision of the Circuit Court of Appeals in the instant case.

The question raised by the Circuit Court of Appeals in its decision in this case that the demand of the union upon the employer to recognize it as the bargaining agent of his employees, although his employees were not members of that union and did not designate it as a bargaining agent, is coercion in violation of the preamble of the Norris-LaGuardia Act and the Wisconsin Labor Code, was answered by the court in the negative (American Furniture case, supra, 367, et seq.)

The court there shows that the preamble of both acts provides only that the worker shall be free from interference and coercion *by the employer,* and that neither act contained any provision, either in the body of the act, nor in the preamble, prohibiting such interference or indirect coercion as may result from the activity and efforts of a labor union in the exercise of its rights of persuasion and effort at organization to get all employees into the union. It is clear that neither Congress nor the legislature of Wisconsin intended that there should be any prohibition on the labor unions in exercising to the fullest extent their efforts to obtain 100% organization.

The language of the preamble of both acts is identical with reference to this matter, and is as follows:

> "The individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows. It is necessary that he have full freedom of association, self-organization,

> and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. * * * "

It will be noted that the language of both preambles is "free from the interference, restraint or coercion of *employers of labor, or their agents.*"

If Congress and the legislature of Wisconsin had intended to prohibit the incidental effect in forcing certain employees who do not wish to join organizations into such organizations, it would have said so, or at least would not have used the definite and clear language restricting only coercion by employers. This is the old argument against the strike for a closed shop. It has been repeatedly urged that the strike for a closed shop forces those employees who do not wish to join any organization, either to join the organization or quit their employment. Nevertheless, the question of the right to strike for, and agitate for, the closed shop is no longer an open one.

The Circuit Court of Appeals says, that it is the declared public policy of both the Nation and the State of Wisconsin to protect the substantive right of employees not to be coerced to join any organization, and that such right will be protected by injunction even though no specific provision therefor be contained in either the Wisconsin Labor Code or the federal legislation. This statement is exactly the contrary of the true situation today if it be applied, as the Circuit Court of Appeals applies it, to such pressure as results from labor's own

efforts to organize. It is the declared public policy, both of the United States and of the State of Wisconsin, that economic peace can only be obtained by fostering and aiding organizations of laboring men and permitting them the utmost freedom in their attempt to organize all workingmen. This is clearly expressed in the legislation. It is the background of much other modern labor legislation, and it is the public policy expressed by this court. It has become the settled doctrine that this country can not get out of its industrial turmoil and achieve conditions of industrial peace and that good order cannot be restored except by fostering labor organizations and treating with workingmen in organizations. Therefore, it is a beneficent exercise of the police power of the Government to aid labor organizations and assist them in their efforts to get all workingmen into such organizations.

> "Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries v. Tri-City Central Trades Council,* 257 U. S. 184, 209. We reiterated these views when we had under consideration the Railway Labor Act of 1926. Fully

recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate collective action of employees an instrument of peace rather than of strife. We said that such collective action would be a mockery if representation were made futile by interference with freedom of choice."

National Labor Relations Board v. Jones & Laughlin Steel Corporation (301 U. S. 1) 81 L. Ed. 573.

"It has been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *American Steel Foundries v. Tri-City Central Trades Council,* 257 U. S. 184, 209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife."

Texas & N. O. R. Co. v. Ry. Clerks, 281 U. S. 548, 570.

"In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression."

West Coast Hotel Co. v. Parrish, 300 U. S. 379, 393.

It is clear, therefore, that that statement of public policy by the Circuit Court of Appeals is erroneous.

Following the case of *American Furniture Co. v. I. B. of T. C. & H.*, supra, the Supreme Court of Wisconsin decided the case of

Senn v. Tile Layers Protective Union, Local No. 5, 222 Wis. 383, 268 N. W. 270,

and extended the doctrine of the American Furniture case by holding that a labor dispute existed, notwithstanding that all employees of the employer were satisfied, and did not wish to join the union, and that there was no dispute between the employer and his employees, and that it was sufficient ground to constitute a labor dispute that the union demanded that the employer cease to work with the tools of his trade.

It is clear, therefore, that the decision of the Circuit Court of Appeals is contrary to the law of Wisconsin, and that, therefore, it is erroneous. Irrespective of what the Circuit Court of Appeals held as to the Norris-LaGuardia Act, its decision as to the Wisconsin Labor Code is erroneous, and this in itself is ground for its reversal.

B. Picketing and Persuasion Not Torts.

The statement by the Circuit Court of Appeals that the acts of picketing and persuasion under the circumstances here present were unlawful acts would seem to indicate that the court regarded them as torts. As has been shown, these acts by the Labor Code of Wisconsin were expressly legalized, and if they ever were torts in Wisconsin they certainly are not such today. However, there is no authority at common law for holding that picketing and persuasion by workingmen is tortious. While courts have in many instances enjoined such conduct under certain circumstances, this has commonly

been done without accurate analysis of the nature of the acts. If the acts constituted torts, then the law must afford the usual common law remedy of damages. The courts have not held that this results from such acts. While it was an established common law doctrine that the malicious enticing of a workman from his employer, or malicious interference with the contract of employment was a tort, it was not held that interference with the employer by persuasion and picketing during a strike constituted a common law tort. In

American Foundries v. Tri-City Council,
257 U. S. 184,

Chief Justice Taft discusses the question (208, et seq.) and comes to the conclusion that since the strike has become a lawful instrument in the economic struggle, such conduct cannot constitute a tort; that such conduct is only malicious when the basis, that is, a strike or economic controversy with the employer, does not exist. Since by the present legislation labor disputes are legalized, such conduct in any labor dispute cannot be a tort. The reasoning of Justice Taft applies to those persons who were held not to have the right to picket under the then rule of law. In the present case, as has been shown there was clearly a labor dispute. Since that is so, the picketing and persuasions could not constitute a tort. But even if the premise that there was no labor dispute were correct, the picketing and persuasion could not be held to be malicious under the rule laid down by Chief Justice Taft. Therefore, it was not a tort. While such conduct was not tortious, courts often exercised their equity power to enjoin it. That equity power has been taken away both by the Norris-LaGuardia Act and the Wisconsin Labor Code.

It follows that there was no basis in law to enjoin the persuasion and picketing in this case.

It is submitted that it has been shown that the decision of the Circuit Court of Appeals is contrary to and does violence to the Wisconsin Labor Code, and that the decision of the Supreme Court of Wisconsin upon parallel facts correctly interprets the Wisconsin Labor Code. It has also been shown that the conduct here enjoined is not tortious, and the statement by the Circuit Court of Appeals that such conduct is unlawful, is not based upon any rule of the common law, and is unsound legal reasoning. It is, therefore, submitted that the judgment should be reversed.

V.

THE CONSTITUTIONALITY OF THE NORRIS-LAGUARDIA ACT IS BEYOND QUESTION AND HAS BEEN DECIDED BY THIS COURT

The only question of constitutionality with reference to the Norris-LaGuardia Act has been settled beyond question by this court, and is so clear from the terms of the constitution itself that it would seem to be beyond argument.

A. Abolition of Jurisdiction to Issue Injunctions.

As has been shown, the Norris-LaGuardia Act merely limits the equity jurisdiction of the Federal court by taking away that part of their power which they heretofore exercised in issuing injunctions in labor disputes. The question of constitutionality therefore relates to Article III, Sec. 2 of the Constitution of the United States. It is the settled law of this court that all juris-

diction of all the Federal courts, except this court, is derived solely from the statutes of Congress.

Kline v. Burke Construction Co., 260 U. S. 226, 67 L. Ed. 226, 43 S. Ct. 97, at l. c. 231.

> "The effect of these provisions is not to vest jurisdiction in the inferior courts over the designated cases and controversies, but to delimit those in respect of which Congress may confer jurisdiction upon such courts as it created. Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold, or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. Turner v. Bank of North America, 4 Dall. 8, 10, 1 L. ed. 718, 719; United States v. Hudson, 7 Cranch, 32, 3 L. ed. 259; Sheldon v. Sill, 8 How. 441, 448, 12 L. ed. 1147, 1150; Stevenson v. Fain, 195 U. S. 165; 49 L. ed. 142, 25 Sup. Ct. Rep. 6. The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it required an act of Congress to confer it. Nashville v. Cooper, 6 Wall. 247, 252, 18 L. ed. 851, 852. And the jurisdiction, having been conferred, may, at the will of Congress, be taken away in whole or in part."

B. No Question Under Fifth Amendment.

The Norris-LaGuardia Act created no substantive rights and takes none away that existed before its passage. Therefore, no question arises as to its validity as an exercise of the police power of Congress under the equal protection and due process clauses of the Fourteenth Amendment, nor under the similar provisions of the Fifth Amendment.

The constitutionality of the Wisconsin Labor Code was established by this court in

Senn v. Tile Layers Protective Union, 301 U. S. 468, 57 S. Ct. 857, 81 L. Ed. 829.

At l. c. 477, the court says:

> "The question for our decision is whether the statute as applied to the facts found took Senn's liberty or property or denied him equal protection of the laws in violation of the Fourteenth Amendment."

at l. c. 478:

> "THIRD. Clearly the means which the statute authorizes—picketing and publicity—are not prohibited by the Fourteenth Amendment. Members of a union might without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

at l. c. 480:

> "FOURTH: The end sought by the unions is not unconstitutional."

at l. c. 482:

> "SIXTH: It is contended that in prohibiting an injunction the statute denied to Senn equal protection of the laws, and Truax v. Corrigan, supra, is invoked. But the issue suggested by plaintiff does not arise. For we hold that the provisions of the Wisconsin statute which authorized the conduct of the unions are constitutional. One has no constitutional right to a 'remedy' against the lawful conduct of another."

If there were any question as to the validity of the Norris-LaGuardia Act under the due process act of the Fifth Amendment of the Constitution, the same would

be disposed of by the foregoing decision of this court with reference to the Wisconsin Act. The provisions of the Norris-LaGuardia Act are parallel to the Wisconsin Act, and clearly if the Wisconsin Act does not violate the equal protection and due process clauses of the Fourteenth Amendment, then the Norris-LaGuardia Act could not violate the due process clause of the Fifth Amendment. However, this question does not even arise because the Norris-LaGuardia Act constitutes merely a limitation of the equity jurisdiction of the Federal courts.

As has been shown there can be no question of the constitutionality of either the Norris-LaGuardia Act or the Wisconsin Labor Code, and that the broadest interpretation of these acts as was given in the Senn case does not create questions of validity.

VI.

THE DECISION OF THE CIRCUIT COURT OF APPEALS IS NOT IN ACCORD WITH EXISTING LAW

The Circuit Court of Appeals for the Seventh Circuit stands practically alone in the stand which it has taken in the cases which culminated in the decision in the present case as to the rights of organized labor upon facts such as exist in this case. It is the general modern doctrine that the right to picket and use peaceful persuasion exists without statute where facts such as exist in the present case are present.

In the appendix to respondent's brief in *Senn v. Tile Layers Protective Union, supra,* (No. 658, October 1936 Term) are listed 17 states which have passed labor codes or laws similar to the Norris-LaGuardia Act. Since

that list was made Maryland and Pennsylvania have passed new legislation on the subject.

The doctrine is quite well established by the decided cases today whether under the legislation referred to, or without it, that organizations of labor have the right to strike for a closed shop, or to picket peacefully without declaring a strike, and to use every means of peaceful persuasion to attempt to increase their organization, to persuade workingmen to join such organization and to dissuade the public from dealing with an employer who refuses to deal with a labor organization. It is also settled that this right to use peaceful persuasion extends at least to all those engaged in the same industry irrespective of the fact whether employees of the particular employer have a dispute with him or not. Picketing and persuasion by labor unions for the purpose of unionizing a particular industrial establishment, is legal.

> "The purpose of a labor union to improve the conditions under which its members do their work, to increase their wages, to assist them in other ways, may justify what would otherwise be a wrong. So would an effort to increase its numbers and to unionize as entire trade or business. * * * Economic organization today is not based on the single shop. Unions believe that wages may be increased, collective bargaining maintained, only if union conditions prevail, not in some single factory, but generally. That they may prevail, it may call a strike and picket the premises of an employer with the intent of inducing him to employ only union labor. And it may adopt either method separately. Picketing without a strike is no more unlawful than a strike without picketing. Both are based upon a lawful purpose. Resulting injury is incidental and must be endured."

Exchange Bakery & Restaurant v. Rifkin, 245 N. Y. 260.

"The modern view is that picketing is not per se unlawful, and should not be enjoined, if peaceably carried on for a lawful purpose."

Bayonne Textile Corporation v. American Federation of Silk Workers et al., 116 N. J. Eq. 146, 176 A. 551.

Steffes v. Motion Picture Operators' Union, 136 Minn. 200, 161 N.W. 524.

Kirmse v. Adler, 311 Pa. 78, 166 Atl. 566.

United Chain Theatres Company v. Philadelphia M. P. M. O. Union (Pa.), 50 Fed. (2d) 189.

S. A. Clark L. Co. v. Cleveland W. & D. Local No. 106 (Ohio) 154 N. E. 362.

Blumauer v. Local No. 159, 141 Ore. 399, 17 Pac. (2) 1115.

Cinderella Theater Co. v. Sign Writers' Local Union (D. C. Mich.), 6 F. Supp. 164.

Fenske Bros. v. Upholsterers International Union of North America, 358 Ill. 239, 193 N. E. 112.

Dean v. Mayo (La.), 8 F. Supp. 73.

Miller Parlor Furniture Company v. Furniture W. I. Union (N. J.), 8 F. Supp. 209.

National Protective Association of Steam Fitters & Helpers v. Cummings et al., 170 N. J. 315, 63 N. E. 369.

Nann v. Raimist, etc., 255 N. Y. 307, 174 N. E. 690.

Wise Shoe Co., Inc., v. Retail Shoe Salesmen's Union, 266 N. Y. 264, 194 N. E. 749.

Curran v. Galen (N. Y.), 46 N. E. 297.

Jacobs v. Cohen, 76 N. E. 5.

Kissem v. Printing Company, 92 N. E. 214.

Roddy v. United Mine Workers (Oklahoma) 139 Pac. 126.

Shaughnessy v. Jordan (Indiana) 111 N. E. 622.

Grace Company v. Leonard Willams et al., 20 F. Supp. 263.

Coryell & Son v. Petroleum Workers Union, et al., 19 F. Supp. 749.

American Furniture Co. v. I. B. of T. C., etc., Local No. 200, 222 Wis. 338, 268 N. W. 250, 106 A.L.R. 335. (Copious note giving history and many cases.)

Geo. B. Wallace Co. v. International Assn. of Mechanics, Mt. Hood Lodge, Local No. 1005 Auto Mechanics, 63 Pac. (2d) 1090 (Ore.).

Starr v. Laundry & Dry Cleaning Workers Local Union No. 101, 63 Pac. (2d) 1104.

Levering v. Garrigues Co. v. Morrin, 71 F. (2d) 284, (C.C.A. 2nd, 1934), Cert. Den. 293 U. S. 595.

It is submitted that the decision of the Circuit Court of Appeals is erroneous under the generally prevailing law in the United States.

VII.

THE DECREE OF THE DISTRICT COURT AWARDING THE INJUNCTION WITHOUT THE FINDINGS OF FACT REQUIRED BY THE FEDERAL AND WISCONSIN STATUTES, WAS WITHOUT JURISDICTION, AND THE DECISION AFFIRMING IT, IS ERRONEOUS

While the District Court complied with the Norris-LaGuardia Act and regarded the case as one involving a labor dispute, insofar as it required oral evidence in open court as a condition to the issuance of the injunction it failed to require the showing of the facts which are a condition precedent to the granting of an injunction either temporary or permanent in a case involving a labor dispute.

The Norris-LaGuardia Act provides, 29 U.S.C. Sec. 107, that no Federal court shall have jurisdiction to issue an injunction in any case involving or growing out of labor dispute, except after findings of fact by the court, (a) that unlawful acts have been threatened and will be committed unless restrained, or have been threatened and will continue unless restrained; (b) that substantial and irreparable injury to complainant's property will follow; (c) that as to each item of relief granted greater injury will be inflicted upon complainant by denial of relief than will be inflicted upon defendant by granting of relief; (e) that public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

The section has definitely revoked the jurisdiction of the Federal Courts to issue injunctions in labor dis-

putes, unless specified facts are present and found to be present by the court. In the present case the court upon its conclusion that there was no labor dispute involved in the case required no evidence as to any of the facts specified in the foregoing section of the act, and refused to make any findings as to these facts. Since it has been shown that the case clearly involves a labor dispute, the injunction was without jurisdiction of the court.

It will be urged by respondent that the District Court has found in its findings of fact that appellants have gone beyond peaceful conduct. It is true that the findings of fact contain the conventional accumulation of words usually included by counsel in findings of fact in cases of this kind. Thus the court finds (T.R. 6 and 66) that for the purpose of coercing respondent to require its employees to join the union, and for the purpose of injuring and destroying the business of respondent, appellants have conspired to cause and have caused false and misleading signs and placards to be placed before the markets of the respondent, and have falsely accused the respondent of being unfair to organized labor, and have prevented patrons of respondent from patronizing said markets by molestation, annoyance, threats and intimidation. The evidence, which is very brief, shows that the acts of the appellants consisted in carrying the usual signs stating their opinion that respondent was unfair to organized labor, and that the persuasion consisted in attempting to induce the public not to deal with respondent. There was no violence, no breaches of the peace and no necessity for the interference of peace officers. The activities were the usual ones incident to a strike or picketing.

But even though the findings of the District Court be taken as a verity and though the words used therein be taken in their broadest scope, it is submitted that the judgment of the District Court, and the injunction issued upon the same, were erroneous in law.

The judgment (T.R. 9) provides that a writ of permanent injunction issue restraining the defendants "from *in any wise* picketing," and "from advertising, stating or pretending that the said complainant, E. G. Shinner & Company is *any wise unfair to said* defendant, or organized labor generally, and from annoying, molesting or *persuading* or *soliciting* any customers or prospective customers to cease patronizing the complainant." The permanent injunction (R. 10, (6172)-) is in the same terms. Whether or not there had been acts on the part of appellants which exceeded their rights, or the rights of organized labor, the judgment and injunction in these terms, is not warranted by the law.

> "Here, however, the excess has been noise and shouting whereby customers were frightened and crowds collected. We have never gone so far as to hold that wherever acts or words went beyond peaceful picketing, all picketing was to be enjoined."
>
> *Wise Shoe Co., Inc. v. Retail Shoe Salesmen's Union,* 266 N. Y. 264.

The same situation prevailed in—

> *Bayonne Textile Corporation v. American Federation of Silk Workers, et al.,* 116 N. J. Eq. 146, 176 A. 551.

in which the Appellate Court held that an injunction of the scope of this one was not legally permitted.

It is submitted that there is nothing in the evidence of this case distinguishing it from the usual case of a labor dispute, with its concomitants of noise, excitement and some boisterousness, and that there was no basis for the general language contained in the findings. But, whether this be true or not, there was no basis in law for the prohibition against *all picketing* and *all peaceful persuasion*. Therefore, the decision of the Circuit Court of Appeals in sustaining the judgment of the District Court was erroneous.

The Circuit Court of Appeals also endeavors to sustain its position, and it will no doubt be argued here by respondent, that there is a controversy here between two unions, and that the employer is not interested in this fight. This is not a fact. The attempt to put up the so-called rival union as against petitioner union is the usual transparent subterfuge of the employer to divert attention from himself and seek to focus it on a straw man of his own creation.

There is no finding of fact by the trial court as to any controversy with any alleged union of the employees of the respondent. Clearly, therefore, the trial court was convinced that there was no contest between any rival union. The findings of fact both upon the granting of the temporary injunction (T.R. 66) and upon the trial (T.R. 6) definitely settled the fact that this is a contest between an employer and employee.

The respondent did try to divert attention by establishing the existence of a union amongst its own employees. That this so-called union was the conventional and notorious employers' own union at which the provisions of the Wagner Labor Relations Act are aimed is clear beyond question from the evidence. When

the employer became aware that a labor controversy was about to be started by petitioner union to improve conditions in respondent's place of its business, and to demand the recognition of the union, it started the usual tactics of endeavoring to create a union in its own place, and this it did, as it is always done in these cases, by attempting to produce the initiative through some of its employees. Mr. Russell, the Vice-President of respondent, would not say that the union was not a countermove against the A.F.L. Union, but immediately came forward with the statement that it was formed on the request of the "boys", meaning his employees (T.R. 44). At the request of the employees, he says that he helped them start it and that the company helped form the company union, and of course, the company union, as is always the case in these controversies became a 100% union, that is, every employee of respondent belonged to it. (See testimony of Sokolowski, T.R. 50), who also describes how the union was formed at luncheons with the help of Vice-President Russell and a Mr. Anderson who was brought from Chicago by the company for the specific purpose of forming the union and providing it with constitution and by-laws. The men did not know who he was (T.R. 52) but it was afterwards stipulated by counsel for respondent that he is the secretary and auditor of the company (T.R. 58). It is clear, therefore, that this so-called union is a company union and a mere sham created to fool the men and to hamper real labor organization. Nor were the men, who suddenly became so anxious to have a labor organization, informed that a few days before the company had received the demand of the petitioner, A.F.L. Union that it sign a union agreement. (T.R. 52), and it is quite evident

that all employees knew that, in spite of the profession by respondent of the freedom of choice of labor organizations accorded the employees, that they had to belong to the company union (T.R. 63, testimony of Heller) to hold their jobs.

It is clear, therefore, that there is no basis for the statement of the Circuit Court of Appeals that this is a controversy between two unions. It is a labor controversy against an employer who has created for his own purposes an agency to help him defeat organized labor, that is, the company union. It is clear also that there is no analogy between this case and *United Electric Coal Co. v. Rice,* 80 Fed. (2nd) 1, in which case there were really and in truth two rival labor organizations not formed by the employer, or through his intervention, but the voluntary creation of workmen. It is, therefore, submitted that the statement by the Circuit Court of Appeals as to the existence of a dispute between rival unions in this case is not warranted by the facts and gives no support to its decision.

CONCLUSION

It has been shown that the decision of the Circuit Court of Appeals strikes out from the Norris-LaGuardia Act essential provisions thereof, and that by this means the entire purpose of the act is frustrated. It has also been shown that it was clearly the intent of Congress that every controversy in the economic field between the employer and workingmen was intended to be covered by the act, and that there can be no doubt at least that a case such as the present in which the controversy is directly between employees and employer engaged in the same

craft and industry, was certainly intended to be covered by the act; that this excessively clear from the definite terms of the act itself, together with many explanatory clauses, and the use of the most broadly inclusive terms, as well as from the history of the act in Congress, and the debates in committee which reported the act. It has also been shown that the immediate reason for the act and the aim of organized labor in obtaining its passage was to offset the construction of the Clayton Act by this court in the American Foundries case; that the decision of the Circuit Court of Appeals would nullify this aim and purpose and set the law back to where it was prior to the decision in the American Foundries case. It has also been shown that the language of the preamble is clear to the effect that it is the public policy of the country expressed by Congress that self-organization of laboring men shall be free from employer interference, and that such coercion as results from use by organized labor itself of its strength to increase its organization, is not within the condemnation of the act. It has also been shown that under the terms of the act it is of no significance that none of the employees of respondent were members of appellant union. It has been further shown that the terms of the Wisconsin Act are synonymous with the Norris-LaGuardia Act, and that the interpretation of the Wisconsin Act by the Wisconsin Supreme Court contrary to the interpretation by the Circuit Court of Appeals, is correct. It has further been shown that the case presents the conventional and oft-repeated economic controversy of organized labor with an employer, the sole object of which is the strengthening of organization and the extension of membership, and that such object is generally recognized as legitimate by the courts, and as one of the objects which was intended to be protected by

the terms of the state and federal legislation. It has further been shown that upon all grounds the decision of the Circuit Court of Appeals, is erroneous.

The case is of transcendent importance to organized labor. Upon its decision depends the realization whether real gain has been achieved in recent years by legislation intending to vouchsafe and broaden the rights of labor. Upon its decision depends whether economic war shall again be the rule of the day, or whether industrial peace so much desired by the people of the country, shall replace it.

The decision involves not only a construction of the federal legislation, but the final construction of acts in a large number of states which have been modeled upon. Many cases are pending awaiting decision of this case; others have been erroneously decided upon the basis of the decision of the Circuit Court of Appeals. It is submitted that the decision of the Circuit Court of Appeals of one circuit out of accord with the other federal courts, and out of accord with the state courts, should not be permitted to nullify important legislation.

Respectfully submitted,

MORRIS FROMKIN,
Counsel for Appellants.

APPENDIX

PROVISIONS OF NORRIS-LAGUARDIA ACT APPLICABLE TO THIS CASE

Sec. 102. PUBLIC POLICY IN LABOR MATTERS DECLARED. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted.

Sec. 104. ENUMERATION OF SPECIFIC ACTS NOT SUBJECT TO RESTRAINING OR-

DERS OR INJUNCTIONS. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 103 of this chapter;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or employment benefits or insurance, or other moneys or things of value;

(d) By all, lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 103 of this chapter.

Sec. 105. DOING IN CONCERT OF CERTAIN ACTS AS CONSTITUTING UNLAWFUL COMBINATION OR CONSPIRACY SUBJECTING PERSONS TO INJUNCTIVE REMEDIES. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 104 of this chapter.

Sec. 107. ISSUANCE OF INJUNCTIONS IN LABOR DISPUTES; HEARING; FINDINGS OF COURT; NOTICE TO AFFECTED PERSONS; TEMPORARY RESTRAINING ORDER; UNDERTAKINGS. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered and except after findings of fact by the court, to the effect. (a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or tem-

porary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order

shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Sec. 109. GRANTING OF RESTRAINING ORDER OR INJUNCTION AS DEPENDENT ON PREVIOUS FINDINGS OF FACT; LIMITATION ON PROHIBITIONS INCLUDED IN RESTRAINING ORDERS AND INJUNCTIONS. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings

of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

Sec. 113. DEFINITIONS OF TERMS AND WORDS USED IN CHAPTER. When used in this chapter, and for the purposes of this chapter— (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or

indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

WISCONSIN LABOR CODE

Sec. 103.51. PUBLIC POLICY AS TO COLLECTIVE BARGAINING. In the interpretation and application of Sections 103.51 to 103.63 the public policy of this state is declared as follows:

Negotiation of terms and conditions of labor should result from voluntary agreement between employers and employes. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom

of association, self-organization, and the designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Sec. 103.53. LAWFUL CONDUCT IN LABOR DISPUTES. (1) The following acts, whether performed singly or in concert, shall be legal:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement in violation of the public policy declared in Section 103.52;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 103.52;

(c) Paying or giving to, any person any strike or employment benefits or insurance or other moneys or things of value;

(d) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any state;

(e) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patroling any public street or any place where any person or persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

(f) Ceasing to patronize or to employ any person or persons, but nothing herein shall be construed to legalize a secondary boycott;

(g) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;

(h) Advising or notifying any person or persons of an intention to do any of the acts heretofore specified;

(i) Agreeing with other persons to do or not to do any of the acts heretofore specified;

(j) Advising, urging, or inducing without fraud, violence or threat thereof, others to do the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 103.52; and

(k) Doing in concert any or all of the acts heretofore specified shall not constitute an unlawful combination or conspiracy;

(l) Peaceful picketing or patrolling, whether engaged in singly or in numbers, shall be legal.

(2) No court, nor any judge or judges thereof, shall have jurisdiction to issue any restraining order or temporary or permanent injunction which, in specific or general terms, prohibits any person or persons from doing, whether singly or in concert, any of the foregoing acts.

Sec. 103.55. PUBLIC POLICY AS TO LABOR LITIGATION. In the interpretation and application of Sections 103.56 to 103.59, the public policy of this state is declared to be:

Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the respond-

ing party or parties, or that issues after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court, is peculiarly subject to abuse in labor litigation for the reasons that

(1) The status quo cannot be maintained but is necessarily altered by the injunction;

(2) Determination of issues of veracity and of probability of fact from affidavits of the opposing parties that are contradictory and, under the circumstances, untrustworthy rather than from oral examination in open court in subject to grave error;

(3) Error in issuing the injunctive relief is usually irreparable to the opposing party; and

(4) Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case.

Sec. 103.56. INJUNCTIONS; CONDITIONS OF ISSUANCE; RESTRAINING ORDERS. (1) No court nor any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in section 103.62, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of all the following facts by the court or judge or judges thereof:

(a) That unlawful acts have been threatened or committed and will be executed or continued unless restrained;

(b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial thereof than will be inflicted upon defendants by the granting thereof;

(d) That the relief to be granted does not violate the provisions of Section 103.53;

(e) That complainant has no adequate remedy at law; and

(f) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection.

(2) Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to those public officers charged with the duty to protect complainant's property. Provided, however, that if a complainant shall also allege that unless a temporary restraining order shall be issued before such hearing may be had, a substantial and irreable, such a temporary restraining order may be granted parable injury to complainant's property will be unavoidupon the expiration of such reasonable notice of application therefor as the court may direct by order to show cause, but in no case less than forty-eight hours.

(3) Such order to show cause shall be served upon such party or parties as are sought to be restrained and as shall be specified in said order, and then only upon testimony under oath, or in the discretion of the court, upon affidavits, sufficient, if sustained, to justify the court

in issuing a temporary injunction upon a hearing as herein provided for.

(4) Such a temporary restraining order shall be effective for no longer than five days, and at the expiration of said five days shall become void and not subject to renewal or extension, provided, however, that if the hearing for a temporary injunction shall have been begun before the expiration of the said five days the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction.

(5) No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

(6) The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any part having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Sec. 103.57. CLEAN HANDS DOCTRINE. No restraining order or injunctive relief shall be granted to

any complainant who has failed to comply with any legal obligation which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available machinery of governmental mediation or voluntary arbitration, but nothing herein contained shall be deemed to require the court to await the action of any such tribunal if irreparable injury is threatened.

Sec. 103.58. INJUNCTIONS: CONTENTS. Except as provided in Section 103.56, no restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and expressly included in said findings of fact made and filed by the court as provided herein; and shall be binding only upon the parties to the suit, their agents, servants, employes and attorneys, or those in active concert and participation with them, and who shall by personal service or otherwise have received actual notice of the same.

Sec. 103.62. DEFINITIONS. When used in Sections 103.51 to 103.63, and for the purposes of these sections:

(1) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are

engaged in a single industry, trade, craft, or occupation; or who are employes of one employer; or who are members of the same or an affiliated organization of employers or employes; whether such dispute is (1) between one or more employers or associations of employers and one or more employes or associations of employes; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employes or associations of employes and one or more employes or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in subsection (3)) of "persons participating or interested" therein (as defined in subsection (2)).

(2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it and he or it is engaged in the industry, trade, craft, or occupation in which such dispute occurs, or is a member, officer, or agent of any association of employers or employes engaged in such industry, trade, craft or occupation.

(3) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employe, regardless of whether or not the disputants stand in the proximate relation of employer and employe.

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1937.

No. 293

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, Local No. 73,

Petitioners,

vs.

E. G. SHINNER & COMPANY, Inc.,

Respondent.

BRIEF OF THE RESPONDENT

in Opposition to the Petition for Writ of Certiorari.

WALTER L. GOLD,
Counsel for Respondent.

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1937.

No. 293

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, Local No. 73,

Petitioners,

vs.

E. G. SHINNER & COMPANY, Inc.,

Respondent.

BRIEF OF THE RESPONDENT

in Opposition to the Petition for Writ of Certiorari.

May It Please the Court:

Pursuant to Rule 38, Paragraph 3, respondent submits this brief in opposition to petitioners' petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

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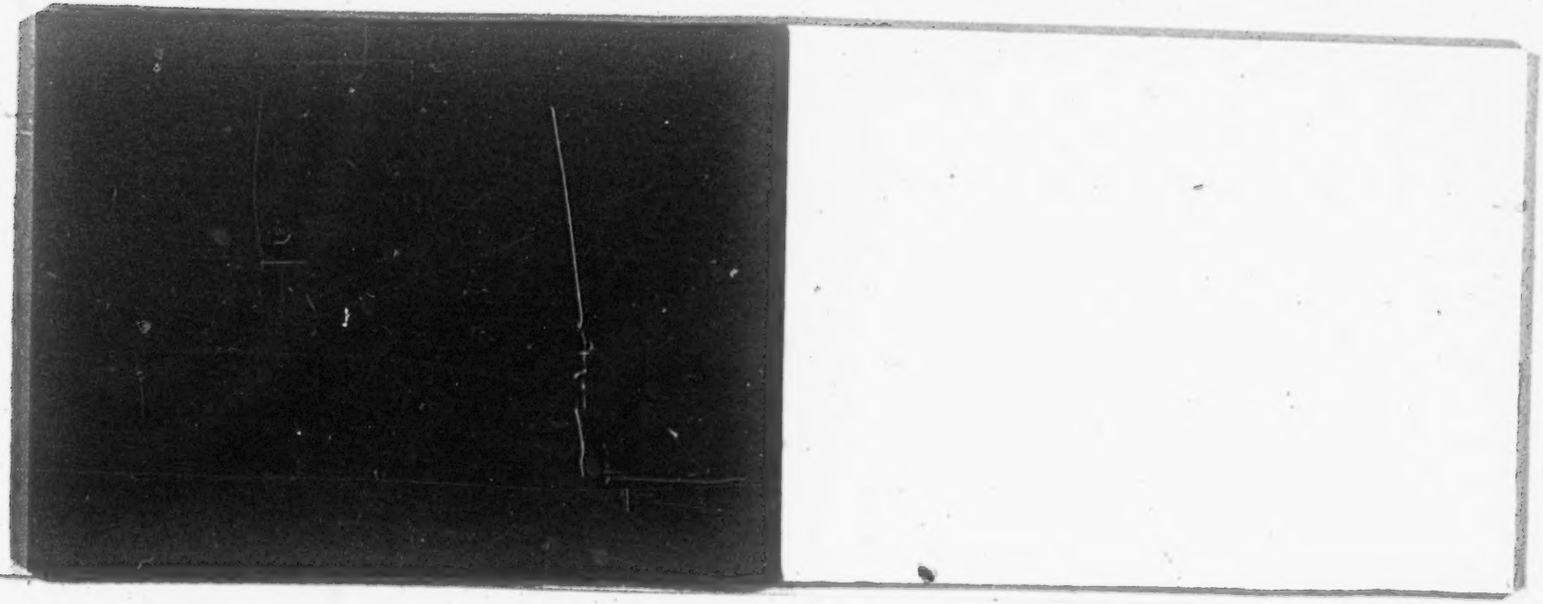

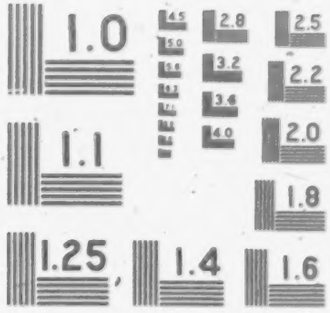

NATURE OF CASE.

Respondent, a Delaware corporation, commenced an action in the United States District Court for the Eastern District of Wisconsin, to permanently enjoin the petitioners, residents of Wisconsin, from picketing respondent's retail meat markets in the city of Milwaukee, Wisconsin. Hearing was had and testimony taken, and a temporary injunction granted by the United States District Court for the Eastern District of Wisconsin. This ruling was affirmed by the Circuit Court of Appeals for the Seventh Circuit (82 Fed. (2d) 68). The cause was then tried on its merits and the United States District Court for the Eastern District of Wisconsin found in favor of respondent and made findings of fact to which no exceptions have ever been taken by the petitioners, and permanently enjoined the petitioners from continuing certain acts. On appeal to the Circuit Court of Appeals the judgment of the District Court for the Eastern District of Wisconsin was affirmed. (Decided May 13, 1937.) Motion for rehearing was denied.

The facts are briefly and correctly stated by the Circuit Court of Appeals in its opinion affirming the interlocutory decree of the District Court in 82 Fed. (2d) 68, at 70, as follows:

> "No strike or dispute between employer and employee is here involved. The primary question presented is whether a labor union representing not one of the employees of a business, can lawfully picket that business and thus injure it, for the purpose of compelling the employer to accept the union as the sole bargaining agent of the employer's workmen over their protest and to the exclusion of the agency which the employees in the exercise of their free choice have unanimously selected."

Contrary to the claimed contention of the petitioners as found on page 2 of their petition for writ of certiorari, the purpose of the picketing was not to induce

> "respondent to sign what is known as a 'Preferential Contract,' which requires the employer to give a preference to union workmen in choosing employees,"

but was

> "For the purpose of coercing the complainant to require its employees to join and become members of said defendant labor union, and accept it as their bargaining agent and representative, as a condition of their continued employment, and for the purpose of injuring and destroying the business of the complainant at said meat markets in the event complainant refused to yield to such coercion, * * *. (Record 6172, page 7, finding of fact 6.)

In order to accomplish this result

> "the defendants have conspired and concerted between them to cause, and have, commencing on April 6, 1935, and continuously thereafter until enjoined *pendente lite* on April 19, 1935, caused false and misleading signs, placards and banners to be placed before the said meat markets of the complainant, and have caused persons, none of whom are employees of the complainant, to parade and picket before the said meat markets of the complainant, and have falsely accused the complainant of being unfair to organized labor in its dealings wih said employees, and that all of the defendants have prevented patrons and prospective patrons of the complainant from patronizing its said meat markets by molestation, annoyance, threats and intimidation, and said defendants would have continued said action but for said in-

junction *pendente lite,* and said defendants would continue such action in the future unless permanently enjoined'' (Record 6172, pages 7-8, finding of fact 6).

The trial court further found, to which finding of fact no exception has ever been taken:

''There is in existence no labor dispute between complainant and defendants, or any or either of them'' (Record 6172, page 8, finding of fact 8).

The trial court further found as a fact, to which no exception has ever been taken:

''* * * that the complainant has notified its employees that they were free to join said union if they so desired, and complainant is now ready and willing to permit them to so join, but that said employees have declined and refused to join said labor union; that said defendant labor union was not the union chosen by any of the said employees of the complainant to represent them in any respect with the complainant'' (Record 6172, page 7, finding of fact 5).

QUESTION INVOLVED.

The only question involved in the instant case is whether the evidence sustains the findings of the trial court. No exceptions to any of the findings have been taken. The case does not present, as claimed by counsel for petitioners on page 3 of the petition for writ of certiorari, any question under the Norris-LaGuardia Act as to the right of a federal court to ''enjoin picketing and peaceful persuasion by a labor union and its members where the employees of the employer who is being picketed are not members of such

labor union, and are not on strike." The purpose of the picketing in the instant case, as found by the trial court, was to coerce the respondent to compel its employees to join an organization in contravention of their unanimous choice. Likewise, the picketing was not peaceful, for, as found by the trial court, the petitioners prevented patrons from patronizing respondent's stores by annoyance, threats and intimidation. The objective of such unlawful picketing was to compel the respondent to coerce its employees to accept the petitioners as their representative contrary to the unanimous decision of the employees, and in the event of the respondent faling to exercise such coercion to destroy the respondent's business.

SUMMARY OF ARGUMENT.

I.

The instant case presents only the question as to the sufficiency of the evidence to sustain the findings of the trial court.

No exceptions have ever been taken to the findings of the trial court and the same have been affirmed by the Circuit Court of Appeals.

II.

The attempt of the petitioners to compel the respondent to recognize them as the sole agent of respondent's employees, none of whom petitioners represent, to the exclusion of the agency which the employees themselves have unanimously accepted is unlawful and an effort to compel the respondent to unlawfully invade the "full freedom" of choice in selecting a bargaining agent which is guaranteed to the employees as a matter of public policy by Section 2

of the Norris-LaGuardia Act (29 U. S. C. A. Section 102), and Section 268.18 of the Wisconsin Statutes.

International Alliance, etc., Local vs. Rex Theatre Corp., 73 Fed. (2nd) 92 (C. C. A. 7th).

Texas & N. O. R. Co. vs. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 50 Sup. Ct. 427.

Trustees of Wisconsin State Federation of Labor vs. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56.

Picketing to accomplish an unlawful purpose is an unlawful invasion of property rights and will be enjoined.

Truax vs. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124.

Parker Paint & Wall Paper Co. vs. Local Union No. 813, 87 W. Va. 631, 105 S. E. 911.

Ellis vs. Journeyman Barber Union, 194 Ia. 1179, 191 N. W. 111.

Roraback vs. Motion Picture, etc., 140 Minn. 481, 168 N. W. 766, 169 N. W. 529.

Harvey vs. Chapman, 226 Mass. 191, 115 N. E. 304.

Hughes vs. Kansas City Motion Picture, etc., 282 Mo. 304, 221 S. W. 95.

III.

No "labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act exists in this case.

29 U. S. C. A., Section 113.

Lauf vs. E. G. Shinner & Co., 82 Fed. (2d) 68.

Scavenger Service Corp vs. Courtney, 85 Fed. (2d) 825.

United Electric Coal Co. vs. Rice, 80 Fed. (2d) 1.

H. R. Report 669, 72d Congress.

S. R. Report 163, 72d Congress.

No labor dispute can arise out of the refusal of the employer to do that which is unlawful.

29 U. S. C. A., Section 102.

Ebert vs. Poston, 266 U. S. 548, 45 Sup. Ct. 188.

Fleischmann Const. Co. vs. U. S., 270 U. S. 349, 46 Sup. Ct. 284.

Price vs. Forrest, 173 U. S. 410, 19 Sup. Ct. 434.

Hellmich vs. Hellman, 276 U. S. 233, 48 Sup. Ct. 244.

Congress, in declaring as a rule of public policy the right of the employee to be free from interference, did not intend to restrict the power of the courts to suppress such interference by injunction.

29 U. S. C. A., Sections 102, 113.

The provisions of the Act which purport to limit the jurisdiction of the courts are to be strictly construed.

Duplex Printing Press Co. vs. Deering, 254 U. S. 443, 41 Sup. Ct. 172, 178.

The provisions of the Act restricting jurisdiction apply only to cases involving labor disputes, and hence have no application here.

29 U. S. C. A., Sections 101 to 113.

IV.

The requirement of Section 7 of the Norris-LaGuardia Act that specific findings of fact be made applied only to cases arising out of labor disputes, hence is inapplicable here.

29 U. S. C. A., Section 107.

For the same reason, it was unnecessary for complainant to prove that it made every reasonable effort to settle the "dispute".

29 U. S. C. A., Section 108.

V.

The case of *Senn vs, Tile Layers Protective Union, Local No. 5,* 300 U. S. ....., 81 L. Ed. 829, 57 Sup. Ct. 857, relied upon by petitioners presented an entirely different set of facts and is clearly distinguishable from the case at bar.

VI.

This court has in effect ruled the same as the Circuit Court of Appeals for the Seventh Circuit ruled in the instant case in *United Electric Coal Co. vs. Rice,* 80 Fed. (2d) 1, Petition for writ of certiorari was denied by this Court in 297 U. S. 714.

National Labor Relations Board vs. Jones & Laughlin Steel Corp., 57 Sup. Ct. 615, at 627, ... U. S. ..... 81 L. Ed. 573.

ARGUMENT.

I.

Counsel for petitioners throughout the brief assumes that there was a labor dispute, and that the pickets were merely using peaceful persuasion. These assumptions are contrary to the facts as found by the trial court and approved by the Circuit Court of Appeals. Counsel for the petitioners apparently realizes the weight to be given to the findings of fact of the trial court, for on page 32 of the brief he attempts to dispose of these findings of fact as follows:

"It is true that the findings of fact contain conventional accumulation of words usually included by counsel in findings of fact in cases of this kind."

We submit that findings of fact made by a United States District Court cannot be disposed of with such ease and nonchalance.

Likewise, counsel for the petitioners erroneously assumes throughout the brief that a labor dispute existed. This is contrary to the findings of fact, particularly the 8th finding of fact, which specifically finds (R. 6172, page 8):

"There is in existence no labor dispute between complainant and defendants, or any or either of them."

On page 18 of petitioners' brief is found a statement to the effect that there was a dispute as to the hours of labor, and that therefore this forms a basis for a labor dispute. An examination of the record discloses that this is the first time this contention has ever been made. This contention is without foundation in fact and contrary to the testimony. The testimony of the respondent on this point is as follows (R. 5551, page 13):

"There is no dispute at the present time between me and any of my men in reference to wages or in reference to hours of labor or conditions of labor. There is no dispute between me and any of my men at the present time with reference to who shall represent them. There is no dispute of any kind between me and any of my men at the present time."

Likewise, counsel erroneously assumes on page 36 of his brief that the bargaining agent selected by the employees of the respondent was a company union. The undisputed

proof is that the respondent did not know what union any of its men belonged to, and was not concerned with it in any manner (R. 5551, page 13). The sole concern of the respondent was that its business and property should not be destroyed by the petitioners in their attempt to coerce the respondent to compel its employees, contrary to their unanimous decision, to select petitioners as their sole bargaining agent. After hearing the testimony the trial court found as a fact that there was no labor dispute, which finding of fact was affirmed by the Circuit Court of Appeals for the Seventh Circuit, and to which finding of fact no exception or proper challenge has ever been made by petitioners.

II.

The only justification which the petitioners claim for the injury which they seek to inflict upon respondent's business, is the refusal of the respondent to recognize them as the sole bargaining agent of respondent's men to the exclusion of the representative which the employees themselves have unanimously selected in the exercise of their own free choice.

The contract proposed by the petitioners (Defendant's Exhibit B, Article 14) provides that the respondent "agree not to negotiate with any but the duly elected officers of Local No. 73 or other authorized members of same local, and further agree not to make a contract with anyone not affiliated with Local No. 73." The contract proposed by the petitioners, if signed by the respondent, would prevent recognition of the bargaining agent which the respondent's employees had unanimously selected, and would prevent the making of any contracts, whether of employment or otherwise, between the respondent and its employees, as none of them were members of petitioner union. The petitioners were attempting to force and compel the employer to interfere with the employees' freedom of choice in the selec-

tion of a bargaining agent. Neither the employer nor any of its employees are engaged or involved in a labor dispute with anyone. The petitioners seek to compel the respondent's employees to join the petitioner union in order that it may represent the employees in their dealings with the employer. This would constitute a violation of both the federal and state law if respondent complied with the petitioners' demands, because under both the federal and state law the respondent is specifically enjoined from influencing its employees in their choice of a union or their representative. The employees have specifically refused to join the petitioner union and have formed a union of their own without any aid, assistance, suggestion or interference on the part of the respondent; the employees have unanimously selected their own representatives, likewise without any interference, suggestion or participation of any kind on the part of the employer. The right of the employees to so act is fully protected by both the federal and state law, and to compel the respondent to coerce them to do otherwise would be a direct violation of both federal and state law. Both the Norris-LaGuardia Act and Section 268.18 of the Wisconsin statutes declare rules of public policy, both enactments assuring employees full freedom of association, self-organization and designation of representatives of their own choosing, and both acts specifically provide that employees

> "shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

These declarations establish rights of employees which, the courts will protect by injunction.

Texas & N. O. R. Co. vs. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 569, 50 Sup. Ct. 427, 433.

Trustees of Wisconsin State Federation of Labor vs. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56.

The right of the respondent to carry on its business is a property right, which the courts will protect by injunction against interference committed without just cause or excuse. Picketing or boycotting which have as their sole purpose the injury of the business at which they are directed, are acts of interference within the meaning of the rule.

Truax vs. Corrigan, 257 U. S. 312, 354, 42 Sup. Ct. 124, 137:

> "The employer has, of course, a legal right to carry on his business for profit, and incidentally the subsidiary rights to secure and retain customers * * *. This right to carry on business—be it called liberty or property—has value, and he who interferes with the right without cause renders himself liable."

Again on page 127 the court stated:

> "Plaintiff's business is a property right (Duplex Printing Press Co. vs. Deering, 254 U. S. 443, 465, 41 Sup. Ct. 172, 65 L. Ed. 349) and free access for employees, owner, and customers to his place of business is incident to such right. Intentional injury caused to either right or both by a conspiracy is a tort. Concert of action is a conspiracy, if its object is unlawful or if the means used are unlawful."

It is well settled that no just cause or excuse for picketing can be found outside of the field of employer-employee

relationship, and that within that field its use can only be justified as an aid to the attainment of a legitimate or lawful end.

Parker Paint & Wall Paper Co. vs. Local Union No. 813, 87 W. Va. 631, 105 S. E. 911, 915.

In this case the court said:

> "It is a well-settled principle, based on sound reasoning, that no person or persons have the right to maliciously injure or destroy the business of another, by acts which serve no legitimate purpose of his own.
>
> " 'One man singly, nor any number of men jointly, having no legitimate interests to protect, may not lawfully ruin the business of another by maliciously inducing his patrons and third parties not to deal with him.' Ertz vs. Produce Exch., 79 Minn. 140, 48 L. R. A. 90, 79 Am. St. Rep. 433, 31 N. W. 737."

No "labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act exists in this case. No labor dispute can arise out of the refusal of the employer to do that which is unlawful. The provisions of the Norris-LaGuardia Act restricting jurisdiction apply only to cases involving labor disputes, and hence have no application in the instant case. Thus the requirement of Section 7 of the Norris-LaGuardia Act that specific findings of fact be made applies only to cases involving labor disputes, and hence is inapplicable here for the same reason the provision of the Norris-LaGuardia Act requires respondent to exercise every reasonable effort to settle the dispute is inapplicable here.

III.

No "labor dispute" within the meaning of the Norris-LaGuardia Act exists in this case, and no "labor dispute" can exist in the absence of a controversy between an employer and his employees or a demand by members of the craft of an employer to perform some lawful duty for the benefit of the craft. No "labor dispute" can arise out of the refusal of the employer to do that which is unlawful.

In the instant case petitioners make no attempt to show any justification or excuse for picketing except the claim that the picketing is protected from interference by reason of the Norris-LaGuardia Act. This contention is untenable. Congress has explicitly declared as a matter of public policy the right of the employee to be free from restraint and coercion of every kind. Under these circumstances it cannot be presumed that Congress has withdrawn from federal Courts the power and jurisdiction to protect that right. It is the duty of all courts to give effect to the intent of Congress.

Takoa Ozawa vs. U. S., 43 Sup. Ct. 65, 67, 260 U. S. 178, 194.

Any provisions of the Norris-LaGuardia Act which purport to limit jurisdiction of the courts are to be strictly construed, because such limitation "imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States."

Duplex Printing Press Co. vs. Deering, 254 U. S. 443, 41 Sup. Ct. 172, 178.

Furthermore, the Norris-LaGuardia Act specifically provides its own rule of construction as follows (29 U. S. C. A., Sec. 102):

"*In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter,* the public policy of the United States is hereby declared as follows:

"* * * though he (the employee) should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, * * * and that he shall be free from the interference, restraint, or coercion of employers * * *; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted" (Italics ours).

In the instant case where the acts complained of are not done in furtherance of the employees, organization or bargaining activities, the restrictive provisions of the Norris-LaGuardia Act have no application. Consequently the restrictive provisions of the act cannot be held to apply to a case where the only object of the petitioners' activities is to violate the right given to the employee by the very act itself.

It cannot be contended that Congress in creating certain rights in employees withdrew from the courts the power and jurisdiction necessary to the protection of those rights, or that Congress declared a rule of public policy and at the same time prohibited the courts in enforcing it. The intent and purpose of the act are fully discussed by the Circuit Court of Appeals for the Seventh Circuit in 82 Fed. (2d) 68, which we submit places the correct construction upon the act.

It clearly appears from the legislative history of the act that Congress intended the term "labor dispute" to embrace, and the provisions restricting jurisdiction to be applicable to, only those cases in which a dispute between an employer and his employees existed. The only purpose of Congress, in providing in Section 13 of the Act that persons not in the proximate relationship of employer and employee could be parties to a labor dispute, was to authorize those not standing in such relationship to *assist* the employee in his disputes with his employer, an assistance which had been denied the employee in *Duplex Printing Press Co. vs. Deering,* 254 U. S. 443. This intent clearly appears from the report of the House Committee on judiciary favorably reporting the bill a few days before its passage. That report, quoted from extensively in *Cinderella Theatre Co. vs. Sign Writers' Local Union,* 6 Fed. Supp. 164, recited:

> "In the case of Duplex Printing Press Co. vs. Deering, (254 U. S. 443, 41 Sup. Ct., 172, 65 L. Ed. 349, 16 A. L. R. 196), decided January 3, 1921, and being a six-to-three decision, the Court held so far as pertinent to this particular discussion, that this section of the Clayton Act provided a restriction upon the use of the injunctions in favor only of the immediate disputants *and that other members of the union not standing in the proximate relation of employer and employee could be enjoined. Of course, it is fundamental that a strike is generally an idle gesture if confined only to the immediate disputants.* This is intended to be remedied by the later provision in this act defining the meaning of the term 'person participating in a labor dispute', as to whom, as in the bill defined, the courts are deprived of jurisdiction to issue injunctions in the specified instances set forth in this section * * *.

"Section 13 contains definitions which speak for themselves. It is hardly necessary to discuss them other than to say that these definitions include, as hereinabove stated, a definition of a person participating in a labor dispute which is broad enough *to include others than the immediate disputants* and thereby corrects the law as announced in the case of Duplex Printing Press Co. vs. Deering, supra, wherein the Supreme Court reversed the Circuit Court of Appeals (252 F. 722) and held that the inhibition of Section 20 of the Clayton Act (29 U. S. C. A., Sec. 52) only related to those occupying the position of employer or employee and no others. The Supreme Court held to the same effect in the case of the American Steel Foundries Co. vs. Tri-State Central Trades Council (257 U. S. 184, 42 Sup. Ct. 72, 66 L. Ed. 189, 27 A. L. R. (360), supra" (Italics ours).

This intent also appears from the Senate Committee report, quoted from in the same case (6 Fed. Supp. 170):

"'Section 13 of the bill defines various terms used in the act, and it is not believed that any criticism has been or will be made to these definitions. In order that the limitations may not be whittled away by refined definitions *of what persons are to be regarded as legitimately involved in labor disputes,* the bill undertakes specifically to designate those persons who are entitled to invoke the protection of the procedure required'" (Italics ours).

It will be observed that the committee reports assume without comment that a labor dispute can only be a controversy between an employer and his employees; and that Congress did not intend to enlarge this definition to include

controversies fomented by outsiders seeking to interfere in a harmonious employer-employee relationship, but only intended to give legal sanction to the aid which those not a party to the relationship might give to the "immediate disputants". In order to enjoy the status of a disputant under the Act, a person must be either an employee or one who is aiding the employee in the course of action which he has voluntarily elected to pursue. *29 U. S. C. A., Sec. 113 (c)* provides that the term "labor dispute" includes "any controversy concerning the terms or conditions of employment, or concerning the association or representation of persons in negotiating" the terms of employment. This means any controversy between an employer on the one hand, and his employees and their chosen representatives on the other. In the absence of a controversy between employer and employee, there can be no "labor dispute" within the meaning of the Act.

Beyond this, the expression "any controversy" must sooner or later be limited in its meaning to any controversy having a lawful subject matter. It cannot be held that Congress intended, for example, that a "labor dispute" could be created by employees demanding that an employer surrender his property and business to them as a condition of employment; or by a professional labor organizer demanding that an employer replace all his employees with men whom the organizer represents; or by a professional agitator demanding, over the unanimous protests of the employees, that tribute be paid to him; or that he be accepted as the "sole" representative of the men.

So far as the "right" of intermeddlers to foment a "labor dispute" is concerned, it must be borne in mind that the Norris-LaGuardia Act was designed solely to promote and foster the interests of the employees; they, and they alone, are the subjects of solicitude. The Act was not designed to promote the objects of any particular group

of labor organizers, whether they be affiliated with the A. F. of L., the various communistic organizations, or any of the many independents that have for years existed. It obviously was not intended to promote the type of labor racketeering and exploitation which has developed in this country and which finds its most vicious expression in compelling employers and employees, over their united protests, to accept the racketeer as the "representative" of the men. Coercion of this kind has been among the most disgraceful aspects of our recent economic life. Certainly Congress did not intend to encourage it, or to restrict the jurisdiction and power of the courts to protect the employee against it.

Moreover, unless effect be given to the express purpose of Congress by limiting the meaning of the term "labor dispute" to controversies between an employer on the one hand, and his employees and their *chosen* representatives on the other, not only will the employee be exposed to racketeering, but in addition, the employer will be made the helpless victim of the ruthless acts of labor organizers competing for the plum of representation. If the petitioners can lawfully do what they have undertaken to do, and if the respondent can be forced to yield to their demands and sign the agreement, then the present association of respondent's employes could with even greater right picket the markets for the purpose of compelling the ouster of the petitioners and the reinstatement of the association as representative of the men; and the radical labor groups, the professional labor racketeer, and any other self-styled "representative" of labor could picket and foment disorder to compel the payment to them of some portion of the profits of "representation"; and surely and rapidly the business would be destroyed and the employer left without any redress whatever. It must be remembered that the local

labor organization financially able to respond for the damage it inflicts has not yet appeared in our economic life.

The employer in this case is not involved in any dispute of any kind. It stands ready and willing to deal with any bargaining agency which its employees might care to select. It has repeatedly told its employees that they are free to join the petitioner union or any other union they choose; that it makes no difference to the employer whatever. Both the officers and the employees so testified (R. 5551, pages 13, 16, 22, 23, 26, 27, 28, 29, 30, 35). The employees of their own volition have refused to join the petitioner union because they could not see where it would help them (R. 5551, pages 25, 36); because the petitioner union does not do anything for its members (R. 5551, page 31); because there was trouble among petitioner union's men (R. 5551, page 25).

If the petitioners have any dispute it is with the respondent's men because they refused, in the exercise of their own free choice, to become members of the petitioner union. Since respondent has no controversy with anyone, it is not involved in any "labor dispute", and, therefore, is not within the restrictive provisions of the Norris-LaGuardia Act.

IV.

The requirements of Section 7 of the Norris-LaGuardia Act that specific findings of fact be made apply only to cases arising out of labor disputes (29 U. S. C. A., Section 107), and hence are inapplicable in the instant case, for the reason there is no labor dispute. For the same reason it was unnecessary for the respondent to prove as a condition precedent to obtaining the injunction that it had made every reasonable effort to settle the "dispute" (29 U. S. C. A., Section 108).

V.

Petitioners' brief is based primarily upon the decision of this court in *Senn vs. Tile Layers Protective Union, Local No. 5,* 300 U. S. ....., 81 L. Ed. 829, 57 Sup. Ct. 857.

This Court has not decided the question in issue here contrary to the decision of the Circuit Court of Appeals. This Court has in effect ruled the same as the Circuit Court of Appeals upon a similar question. *United Electric Coal Co. vs. Rice,* 80 Fed. (2d) 1. Petition for writ of certiorari denied by this Court in 297 U. S. 714, 56 Supp. Ct. 590. Likewise the contention of petitioners that the decision of the Circuit Court of Appeals is contrary to the decision of this Court in the case of *Senn vs. Tile Layers Protective Union, Local No. 5,* 300 U. S. ....., 81 L. Ed. 829, 57 Supp. Ct. 857, is untenable. The *Senn* case presented an entirely different set of facts. In the *Senn* case the trial court found as a fact that there was a labor dispute within the meaning of the Wisconsin statutes. See Justice Brandies' opinion, 57 Supp. Ct. 861. In the *Senn* case the trial court also found that the picketing was "peaceful, without violence and without any unlawful act". The trial court also found that the picketing was entirely within the provisions of the Wisconsin Labor Act. The majority opinion of this Court, in discussing the Wisconsin statutes, states (57 Sup. Ct. 862):

> "* * * The statute provides that the picketing must be peaceful; and that term as used implies not only absence of violence, but absence of any unlawful act. *It precludes the intimidation of customers. It precludes any form of physical obstruction or interference with the plaintiff's business* * * *" (Italics ours).

The majority opinion continuing states:

> "The state courts found that the unions observed the limitations prescribed by the statute. * * * The picketing was peaceful. The publicity did not involve a misrepresentation of fact; nor was any claim made below that relevant facts were suppressed * * *."

These facts are entirely different from the facts as found in the instant case. The trial court in the instant case specifically found (R. 6172, page 8, finding of fact 8):

> "There is in existence no labor dispute between complainant and defendants, or any or either of them."

Furthermore, in the instant case the 6th finding of fact (R. 6712, page 7) specifically found that the petitioners

> "caused false and misleading signs, placards and banners to be placed before the said meat markets of the complainant and have caused persons, none of whom are employees of the complainant, to parade and picket before the said meat markets of the complainant."

and further that the defendants

> "have *falsely* accused the complainant of being unfair to organized labor in its dealings with its said employees, and that all of the defendants have *prevented patrons and prospective patrons of the complainant from patronizing its said meat markets by molestation, annoyance, threats and intimidation, and said defendants would have continued said action but for said injunction pendente lite, and said defen-*

dants would continue such action in the future unless permanently enjoined'' (Italics ours).

Furthermore, the trial court in the *Senn* case found as a fact that the end sought by the union was not arbitrary or capricious, but a reasonable rule "adopted by the defendants out of the necessities of employment within the industry and for the protection of themselves as workers and craftsmen in the industry."

In the instant case the trial court found (R. 6172, page 7, finding of fact 6) that the picketing was

> "for the purpose of coercing the complainant to require its employees to join and become members of said defendant labor union and accept it as their bargaining agent and representative, as a condition of their continued employment, and for the purpose of injuring and destroying the business of the complainant at said meat markets, in the event complainant refused to yield to such coercion."

The purpose of the picketing in the two cases is entirely different. The facts as found in the *Senn* case and in the instant case are entirely different. In the *Senn* case there was a labor dispute. In the instant case there is no labor dispute. In the *Senn* case the object of picketing was to advise the public of the existence of a fact, to-wit: the labor dispute. In the instant case the object of the picketing was to coerce the respondent to compel its employees to do an act contrary to the provisions of the Norris-LaGuardia Act, and in the event of the refusal of the respondent to so coerce its employees, to picket the respondent and destroy its business. Furthermore, as pointed out by the majority opinion in the *Senn* case, there was no misrepresentations or untruthful statements. But in the instant case, in order

to accomplish the unlawful object of its picketing the petitioner "caused false and misleading signs, placards and banners" to be placed in front of the respondent's markets and falsely accused the respondent. Again in the *Senn* case the right to relief was founded upon an alleged violation of a state statute. The state court found as a fact in the *Senn* case that there was no violation of the statute. In the instant case relief is sought under a federal statute. The trial court found as facts, which have never been challenged, that there were violations of the federal statutes by the petitioners, and found as a fact that no labor dispute existed, and that the picketing was unlawful and for the purpose of destroying the respondent's business, and unless the petitioners were enjoined respondent would suffer irreparable damage.

It is thus apparent that the nature of the issues in the *Senn* case is so vastly different from the issue involved in the instant case that there is no analogy between them, and the opinion of this Court, instead of being contrary to the decision of the Circuit Court of Appeals in the instant case, as claimed by counsel opposed, is authority for the decision of the Circuit Court of Appeals.

VI.

The same question presented in the instant case was presented to this Court in the case of *United Electric Coal Co. vs. Rice,* 80 Fed. (2d) 1, and petition for writ of certiorari was denied in 297 U. S. 714. In the *United Electric Coal Company* case the Circuit Court of Appeals states the question involved as follows (page 2):

> "The real controversy is one between two unions —the United Mine Workers of America, hereinafter called the United; and the Progressive Miners of America, hereinafter called the Progressive. • • •

Appellant is the innocent bystander, a victim of this unabated conflict. Appellant has no dispute with its employees. The wage scales in force apparently were satisfactory to employer and employee alike. The working conditions brought no discontent. The employees were desirous of working for appellant. With them appellant wished to operate its mine. This has been prevented by the struggle between the two unions over who should represent the employees."

In the instant case the controversy, if there be one, is between the petitioners and the bargaining representative unanimously chosen by respondent's employees. Respondent is the innocent bystander, and but for the relief obtained would be a victim of possible unabated conflict between the petitioners and the bargaining representative chosen by respondent's employees. Respondent has no dispute with its employees. The wage scales in operation are satisfactory to employer and employee alike. The working conditions of the respondent caused no discontent. The respondent's employees are desirous of continuing to work for it, and the respondent wishes to operate its meat markets with its present employees.

Thus the question in the instant case is identical with the question presented in the *United Electrical Coal Company* case, in which case a petition for writ of certiorari was denied.

In *National Labor Relations Board vs. Jones & Laughlin Steel Corp.*, 57 Sup. Ct. 615, at 627, this Court stated:

"• • • The decree which we affirmed in that case (Virginian Railway Co. vs. System Federation No. 40, 299 U. S. ....., 57 Sup. Ct. 592, 81 L. Ed. ....., decided March 29, 1937) *required the railway company*

to treat with the representative chosen by the employees and also to refrain from entering into collective labor agreements with anyone other than their true representative * * *'' (Italics ours).

In the instant case, petitioners contend they have a right to compel respondent to do the very acts this court by injunction required the employer to refrain from doing in the *Virginian Railway Co.* case, supra.

We submit there is no basis for granting the petition for writ of certiorari.

Respectfully submitted,

WALTER L. GOLD,
Counsel for Respondent.

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1937.

No. 293

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, Local No. 73,

Appellants,

vs.

E. G. SHINNER & COMPANY, Inc.,

Respondent.

BRIEF OF THE RESPONDENT

WALTER L. GOLD,
Counsel for Respondent.

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In The

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Appellants,

vs.

E. G. SHINNER & COMPANY, Inc.,

Respondent.

BRIEF OF THE RESPONDENT

NATURE OF CASE.

The respondent, a Delaware corporation, operating five retail meat markets in the City of Milwaukee, commenced this action on April 11, 1935, in the United States District

Court for the Eastern District of Wisconsin, by bill of complaint (R. 29) to temporarily and permanently enjoin the appellants from picketing its retail meat markets in the city of Milwaukee, Wisconsin. Defendants answered and cross-complained for injunctional relief (R. 38). Hearing was had and testimony taken and a *temporary* injunction granted respondent by the United States District Court for the Eastern District of Wisconsin, which, on appeal was affirmed by the Circuit Court of Appeals for the Seventh Circuit (82 Fed. (2nd) 68). Thereafter the case was tried on its merits and the court found in favor of the respondent and made findings of fact and conclusions of law, to which appellants have never taken exception (R. 6 to 8 inclusive). Decree was entered granting writ of permanent injunction (R. 9, 10). On appeal to the Circuit Court of Appeals the judgment of the District Court was affirmed (opinion of the Circuit Court of Appeals filed May 13, 1937, R. 25-26). The Circuit Court of Appeals held on the authority of *United Electric Coal Co. vs. Rice,* 80 Fed. (2d) 1, (Certiorari denied by this court on March 2, 1936, 297 U. S. 714), that the case presented no labor dispute. Hence the Norris-LaGuardia Act was no bar to the right of the court to issue the injunction, the court holding that the issues involved being practically identical with those on the former appeal, the decision of the first appeal became "the law of the case" based on the Circuit Court of Appeal's interpretation of the Norris-LaGuardia Act, not to be changed unless clearly erroneous and unsound, and being convinced that their holding in the former case was not in error, affirmed the present injunction on May 13, 1937.

SUMMARY OF ARGUMENT.

I.

The findings of fact, to which no exception was ever taken, are sustained by the evidence, and the cases of *Senn vs. Tile Layers Protective Union, Local No. 5,* 300 U. S. ....., 81 L. Ed. 829, 57 Sup. Ct. 857, and *American Furniture Co. vs. I. B. of T. C. etc., Local No. 200,* 222 Wis. 338, 268 N. W. 250, 106 A. L. R. 335, are not contrary to the respondent's position on this appeal.

II.

Appellants' attempt to coerce respondent to recognize them as the sole agent of respondent's employees, *none of whom appellant union represents,* to the exclusion of the agency which the respondent's employees have unanimously chosen, is unlawful and an effort to compel respondent to unlawfully invade the "full freedom" of choice in selecting the bargaining agent which is guaranteed to employees as a matter of public policy by Section 2 of the Norris-La-Guardia Act (29 U. S. C. A. 102) and Section 268.18 of the Wisconsin Statutes, and picketing to accomplish such unlawful purpose is an unlawful invasion of respondent's rights and will be enjoined.

International Alliance, etc. Local vs. Rex Theatre Corp., 73 Fed. (2d) 92 (C. C. A. 7th).

Texas & N. O. R. Co. vs. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 50 Sup. Ct. 427.

Trustees of Wisconsin State Federation of Labor vs. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56.

Truax vs. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124.

Parker Paint & Wall Paper Co. vs. Local Union No. 813, 87 W. Va. 631, 105 S. E. 911.

Ellis vs. Journeyman Barber Union, 194 Ia. 1179, 191 N. W. 111.

Roraback vs. Motion Picture, etc., 140 Minn. 481, 168 N. W. 766, 169 N. W. 529.

Harvey vs. Chapman, 226 Mass. 191, 115 N. E. 304.

Hughes vs. Kansas City Motion Picture, etc., 282 Mo. 304, 221 S. W. 95.

Donnelly Garment Co. vs. International Ladies' Garment Workers Union, 20 Fed. Supp. 767 (August 1937) (Motion to dismiss for the reason that the Norris-LaGuardia Act applies depriving court of jurisdiction denied December 31, 1937, by majority of a court of three judges).

III.

No "labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act exists in this case.

United Electric Coal Co. vs. Rice, 80 Fed. (2d) 1, (Certiorari denied 297 U. S. 714).

29 *U. S. C. A. Section* 113.

Lauf vs. E. G. Shinner & Co., 82 Fed. (2d) 68.

Scavenger Service Corp. vs. Courtney, 85 Fed. (2nd) 825.

H. R. Report 669, 72d Congress.

H. R. Report 163, 72d Congress.

No "labor dispute" can arise out of the refusal of the employer to do that which is unlawful.

29 *U. S. C. A. Section* 102.

Ebert vs. Poston, 266 U. S. 548, 45 Sup. Ct. 188.

Fleischmann Const. Co. vs. U. S., 270 U. S. 349, 46 Sup. Ct. 284.
Price vs. Forrest, 173 U. S. 410, 19 Sup. Ct. 434.
Hellmich vs. Hellmich, 276 U. S. 233, 48 Sup. Ct. 244.

Congress, in declaring as a rule of public policy the right of the employee to be free from interference, did not intend to restrict the power of the courts to suppress such interference by injunction, and such provisions applying only to cases involving labor disputes have no application here.

Duplex Printing Press Co. vs. Deering, 254 U. S. 443, 41 Sup. Ct. 172, 178.

IV.

The construction of the Norris-LaGuardia Act contended for by appellants would render the act a violation of Article III of the United States Constitution and the due process clause of the Fifth Amendment.

ARGUMENT.

I.

Finding of fact 5 that the appellants made demand upon the respondent that it require its employees, as a condition of their continued employment, to become members of its union, and that respondent had notified its employees that they were free to join it if they so desired, but that the employees had declined and refused to join the appellant union, which is not the union chosen by any of its employees,

is amply supported by the evidence. (Testimony of E. G. Shinner, R. 40.) This witness testified: "I never told any of my men directly or indirectly they had no right to join the defendant union or what union they should join. I have no objection to the men joining the defendant union if they so desire." The testimony of the vice-president of the respondent is to the same effect, that he had no objection to the employees joining the defendant union if they desired to, and he had not instructed them not to join a union or talked to them at all about the union they should join (R. 43). The testimony of the employee Sokoloski is to the same effect (R. 50). The testimony of Sokoloski, president of the employees' union (R. 50) is that the employees are 100% members of the employees' union; there is no dispute between the association and the employer with reference to wages, hours of labor or working conditions. The employees elected their own bargaining representatives; all the employees were at work and none were picketing. Respondent was indifferent as to which union its employees joined (R. 50).

Appellant mailed to respondent a proposed contract which would have required respondent to employ no one except those supplied by the appellants (R. 45, 46), and threatened, notwithstanding they represented *not one of respondent's employees* to declare and did declare war upon respondent (R. 43), and promptly thereafter started the picketing shown by the photographs received in evidence (R. 43), and commenced assaulting and insulting prospective customers and slandering respondent's products (R. 47, 48, 49, 50, 54). These facts distinguish this case from *Senn vs. Tile Layers Protective Union, Local No. 5,* 300 U. S. ....., 81 L. Ed. 829, 57 Sup. Ct. 857, in which this court said:

> "The picketing was peaceful without violence and without any unlawful act."

American Furniture Co. vs. I. B. of T. C. etc., Local No. 200, 222 Wis. 338, 268 N. W. 250, 106 A. L. R. 335, is not contrary to the judgment in this case, for the reason that in the *American Furniture Company* case the trial court found as a fact a labor dispute did exist, which finding of fact was sustained by a divided appellate court.

Appellants' statement in the first paragraph of the brief that the decree enjoined "all picketing and peaceful persuasion" we submit in view of this evidence is not in accordance with the fact, and if the decree can be given such construction it should be affirmed nevertheless, because appellants were found to have been guilty of repeated assaults and other unlawful acts, and should not be permitted to complain for the first time in this court and say in effect "we repeatedly committed assaults and violence, but only enjoin us from doing these things." The chancellor hearing this case, we submit, was justified in protecting respondent's rights because of the appellants' apparent insistence *not* to peacefully picket and enjoining all picketing by the wrongdoers, and his conclusion that they would not lawfully conduct themselves is supported by the evidence and the inferences to be drawn therefrom.

Finding of fact 6 (R. 7) that the defendants for the purpose of coercing the respondent to require its employees to join and become members of appellants' union and accept it as their bargaining agent and for the purpose of destroying respondent's business in the event respondent refused to yield to appellants' unlawful demands is clearly established by the evidence. Compliance by respondent with the appellants' unlawful demands would have invaded the full freedom of choice in selecting a bargaining agent which is guaranteed to employees as a matter of public policy by Section 2 of the Norris-LaGuardia Act and Section 268.18 of the Wisconsin statutes.

International Alliance, etc., Local vs. Rex Theatre Corp., 73 Fed. (2d) 92, (C. C. A. 7th).

Trustees of Wisconsin State Federation of Labor vs. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56.

The evidence recited as to what appellants did, to-wit: mailing the proposed contract to respondent in which it sought to compel respondent to agree to employ only members of its union, none of whom were in the employ of respondent, and then to declare war on respondent if respondent did not sign its proposed written contract, justified the trial court in concluding that the testimony of the witness Lauf, business agent of the appellant union that "it had a dispute with respondent" to-wit: "that they were violating, as to hours and working conditions and so on" was too much in the language of the Act of Congress, and not to be believed because no such dispute was ever before claimed; nor was that apparent effort to claim a labor dispute consistent with the undisputed fact that the defendant union had theretofore mailed the proposed unlawful contract to respondent and said: "If you don't join I will declare war on you" (R. 43), and when respondent replied: "There is nothing I can do about it," the representative of the union said: "All right the war is on," and thereafter committed the assaults established by the testimony and falsely accused the respondent of being unfair to organized labor and prevented patrons and prospective patrons from patronizing its meat markets by molestation, annoyance, threats and intimidation which they would have continued unless restrained by injunction (Finding R. 7, 8).

Appellants refer to these acts in their brief (page 41) "as acts of picketing and persuasion" and argue "if they ever were torts in Wisconsin they certainly are not such today." The testimony taken on the trial and the findings pursuant thereto show that this is not a case of peaceful picketing in a labor dispute. Appellants have by unlawful

assaults and batteries committed in an effort to compel the respondent to violate the law and compel the respondent to force its employees to join appellant's union to which none of respondent's employees belong. They attempted to avoid being restrained by claiming in general language "our union has a dispute with the company. Our dispute is that *they are violating as to hours and working conditions* and so on." (Testimony of Lauf, R. 59.) Later on the same witness testified (R. 62) "the dispute we claim to have with Shinner is because of their refusal to sign the contract, Exhibit B." This witness continues: "Besides the refusal to sign the contract we have another claimed dispute in so far as that members that work for Shinners complained to us that they are working too long hours and not getting enough money at the time." But the trial court with the advantage of seeing the witness was not compelled to believe this sentence, in view of the witness's subsequent testimony in which he could not give a name of such employee, and admitted that *he* personally did not know any; although he boastfully claimed he could get plenty of men who do know, he failed to produce any such testimony (R. 63).

Appellants' contention means that if any group of men or any labor organization *asserts* it has a dispute or controversy with an employer, the Congressional Act deprives the courts of jurisdiction to issue an injunction. We submit Congress could not have intended that. If the Act means that, we submit it would not be valid. The term "labor dispute" is defined (Norris-LaGuardia Act, 29 U. S. C. A. 113 (c)) to include

> "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or condi-

> tions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

Properly construed, we submit, this language means a real bona fide controversy, or one that has some reasonable basis. How could there be a labor dispute in the case at bar when all the employees are members of an organization with which the employer has no dispute or controversy?

Does this language in the Congressional Act, properly construed, mean that it lies within the power of any person by unfounded assertion to "make a labor dispute"? Is it not within the field of fact for a court to determine whether there is such a labor dispute within the meaning of the act under the facts disclosed in this case?

The language of the Norris-LaGuardia Act which states: "* * * regardless of whether or not the disputants stand in the proximate relation of employer and employee," is meant obviously to include those who are assisting or aiding the employees, but cannot be construed to mean an entire stranger, such as the appellants who neither represent nor aid any of the employees.

II.

The only justification which appellants claim for the injury which they seek to inflict upon respondent's business is refusal of the respondent to recognize them as the sole bargaining agent of respondent's employees to the exclusion of the representative which the employees themselves have unanimously selected in the exercise of their own free choice.

Article 14 of the proposed contract required the respondent "to agree not to negotiate with any but the duly elected officers of Local 73 or other authorized members of the same local, and further agree not to make a contract with anyone not affiliated with Local 73."

This contract proposed by appellant, if signed by the respondent would prevent recognition of the bargaining agent which respondent's employees had unanimously selected, and would prevent the making of any contracts, whether of employment or otherwise, between the respondent and its employees, as none of them were members of the appellant union. Appellants were attempting to force and compel the respondent to interfere with the employees' freedom of choice in the selection of a bargaining agent. Neither the respondent nor any of its employees were engaged or involved in a labor dispute with any one. The appellants are seeking to compel the respondent's employees to join appellant union so that it may represent the employees in their dealings with the employer. This would constitute a violation of both the federal and state law if respondent complied with appellants' demands, because under both the federal and state law respondent is specifically enjoined from influencing its employees in their choice of a union or their representatives.

Respondent's employees have refused to join appellant union; they formed a union of their own without any aid, assistance, suggestion or interference on the part of the respondent. They have unanimously selected their own representatives, likewise without any interference, suggestion or participation on the part of respondent. This right of employees to so act is assured by the Norris-LaGuardia Act and by Section 268.18 of the Wisconsin Statutes. Both acts specifically provide that employees "shall be free from the interference, restraint or coercion of the employers of labor, or their agents, in the designation of representatives or in self-organization or in their concerted activities for the purpose of collective bargaining or other mutual aid or protection."

These declarations establish rights of employees which the courts will protect by injunction.

Texas & N. O. R. Co. vs. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 569, 50 Sup. Ct. 427, 433.

Trustees of Wisconsin State Federation of Labor vs. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56.

Respondent's right to carry on its business is a property right which the courts will protect by injunction against interference committed without just cause or excuse.

Truax vs. Corrigan, 257 U. S. 312, 354, 42 Sup. Ct. 124.

Plaintiff's business is a property right.

Duplex Printing Press Co., vs. Deering, 254 U. S. 443, 465, 41 Sup. Ct. 172, 65 L. Ed. 349.

and free access for employees, owner and customers to his place of business is incident to such right.

It is well settled that no just cause or excuse for picketing can be found outside of the field of employer-employee relationship, and within that field its use can only be justified as an aid of a legitimate or lawful end.

Parker Paint & Wall Paper Co. vs. Local Union No. 813, 87 W. Va. 631, 105 S. E. 911, 915.

III.

No "labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act exists in this case. No labor dispute can arise out of the refusal of the employer to do that which is unlawful. The provisions of the Norris-LaGuardia Act restricting jurisdiction apply only to cases involving labor disputes, and hence have no application in

the instant case. The requirement of Section 7 of that act that specific findings of fact be made applies only to cases involving labor disputes, and hence is inapplicable here for the same reason the provision of the Act which requires respondent to exercise every reasonable effort to settle the dispute is inapplicable here.

No "labor dispute" within the meaning of the Norris-LaGuardia Act can exist in the absence of a controversy between an employer and his employees or a demand by members of the craft of an employer to perform some lawful duty for the benefit of the craft. It should be held that no labor dispute can arise out of the refusal of the employer to do that which is unlawful. Appellants make no attempt to show any justification or excuse for picketing except the claim that the picketing is protected from interference by reason of the Norris-LaGuardia Act. This contention is untenable as Congress has expressly declared as a matter of public policy the right of the employee to be free from restraint and coercion of every kind. It should not be presumed that Congress has withdrawn from the federal courts power and jurisdiction to protect that right.

Takoa Ozawa vs. U. S., 43 Sup. Ct. 65, 67, 260 U. S. 178, 194.

The Norris-LaGuardia Act itself specifically provides its own rule of construction by providing (29 U. S. C. A. Sec. 102):

> *"In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is hereby declared as follows:*
>
> "* * * though he (the employee) should be free to decline to associate with his fellows, it is necessary

> that he have full freedom of association, self-organization, and designation of representatives of his own choosing, * * * and that he shall be free from the interference, restraint, or coercion of employers * * *; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted" (Italics ours).

In the case at bar the wrongful acts enjoined were not done in furtherance of the employees' organization or bargaining activities. The appellants were violating the right given to the employees by the very act itself. It should not be successfully contended that Congress in creating certain rights in employees withdrew from the courts the powers and jurisdiction necessary for the protection of those rights, or that Congress declared a rule of public policy and at the same time prohibited the courts from enforcing it.

The Circuit Court of Appeals of the Seventh Circuit in its decision discusses the intent and purpose of the Act, and we submit places the correct construction upon it. It clearly appears from the legislative history of the Act that Congress intended the term "labor dispute" to embrace, and the provisions restricting jurisdiction to be applicable to, only those cases in which a dispute between an employer and his employees existed. The only purpose of Congress in providing Section 13 of the Act that persons not in the proximate relationship of employer and employee could be parties to a labor dispute, was to authorize those not standing in such relationship to assist the employee in its disputes with its employer, an assistance which had been denied the employee in *Duplex Printing Press Co. vs. Deering*, 254 U. S. 443, 41 Sup. Ct. 172. This intent clearly appears from the report of the House Committee on Judiciary favorably reporting the bill a few days before its passage. That

report, quoted from extensively in *Cinderella Theater Co. vs. Sign Writers' Local Union,* 6 Fed. Supp. 164, recited:

"In the case of Duplex Printing Press Co. vs. Deering, (254 U. S. 443, 41 Sup. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196), decided January 3, 1921, and being a six-to-three decision, the Court held so far as pertinent to this particular discussion, that this section of the Clayton Act provided a restriction upon the use of the injunctions in favor only of the immediate disputants *and that other members of the union not standing in the proximate relation of employer and employee could be enjoined. Of course, it is fundamental that a strike is generally an idle gesture if confined only to the immediate disputants.* This is intended to be remedied by the later provision in this act defining the meaning of the term 'person participating in a labor dispute', as to whom, as in the bill defined, the courts are deprived of jurisdiction to issue injunctions in the specified instances set forth in this section * * *.

"Section 13 contains definitions which speak for themselves. It is hardly necessary to discuss them other than to say that these definitions include, as hereinabove stated, a definition of a person participating in a labor dispute which is broad enough *to include others than the immediate disputants* and thereby corrects the law as announced in the case of Duplex Printing Press Co. vs. Deering, supra, wherein the Supreme Court reversed the Circuit Court of Appeals (252 F. 722) and held that the inhibition of Section 20 of the Clayton Act (29 U. S. C. A., Sec. 52) only related to those occupying the position of employer or employee and no others. The Supreme Court held to the same effect in the case of the Ameri-

can Steel Foundries Co. vs. Tri-State Central Trades Council (257 U. S. 184, 42 Sup. Ct. 72, 66 L. Ed. 189, 27 A. L. R. (360), supra" (Italics ours).

This intent also appears from the Senate Committee report, quoted from in the same case (6 Fed. Supp. 170):

> " 'Section 13 of the bill defines various terms used in the act, and it is not believed that any criticism has been or will be made to these definitions. In order that the limitations may not be whittled away by refined definitions *of what persons are to be regarded as legitimately involvel in labor disputes,* the bill undertakes specifically to designate those persons who are entitled to invoke the protection of the procedure required' " (Italics ours).

It will be observed that the committee reports assume without comment that a labor dispute can only be a controversy between an employer and his employees; and that Congress did not intend to enlarge this definition to include controversies fomented by outsiders seeking to interfere in a harmonious employer-employee relationship, but only intended to give legal sanction to the aid which those not a party to the relationship might give to the "immediate disputants." In order to enjoy the status of a disputant under the Act, a person must be either an employee or one who is aiding the employee in the couse of action which he has voluntarily elected to pursue. *29 U. S. C. A., Sec. 113 (c)* provides that the term "labor dispute" includes "any controversy concerning the terms or conditions of employment, or concerning the association or representation of persons in negotiating" the terms of employment. This means any controversy between an employer on the

one hand, and his employees and their chosen representatives on the other. In the absence of a controversy between employer and employee, there can be no "labor dispute" within the meaning of the Act.

Beyond this, the expression "any controversy" must sooner or later be limited in its meaning to any controversy having a lawful subject matter. It cannot be held that Congress intended, for example, that a "labor dispute" could be created by employees demanding that an employer surrender his property and business to them as a condition of employment; or by a professional labor organizer demanding that an employer replace all his employees with men whom the organizer represents; or by a professional agitator demanding, over the unanimous protests of the employees, that tribute be paid to him; or that he be accepted as the "sole" representative of the men.

So far as the "right" of intermeddlers to foment a "labor dispute" is concerned, it must be borne in mind that the Norris-LaGuardia Act was designed solely to promote and foster the interests of the employees; they, and they alone, are the subjects of solicitude. The Act was not designed to promote the objects of any particular group of labor organizers, whether they be affiliated with the A. F. of L., the various communistic organizations, or any of the many independents that have for years existed. It obviously was not intended to promote the type of labor racketeering and exploitation which has developed in this country and which finds its most vicious expression in compelling employers and employees, over their united protests, to accept the racketeer as the "representative" of the men. Coercion of this kind has been among the most disgraceful aspects of our recent economic life. Certainly Congress did not intend to encourage it, or to restrict the jurisdiction and power of the courts to protect the employee against it.

Moreover, unless effect be given to the express purpose of Congress by limiting the meaning of the term "labor dispute" to controversies between an employer on the one hand, and his employees and their *chosen* representatives on the other, not only will the employee be exposed to racketeering, but in addition, the employer will be made the helpless victim of the ruthless acts of labor organizers competing for the plum of representation. If the appellants can lawfully do what they have undertaken to do, and if the respondent can be forced to yield to their demands and sign the agreement, then the present association of respondent's employees could with even greater right picket the markets for the purpose of compelling the ouster of the appellants and the reinstatement of the association as representative of the men; and the radical labor groups, the professional labor racketeer, and any other self-styled "representative" of labor could picket and foment disorder to compel the payment to them of some portion of the profits of "representation"; and surely and rapidly the business would be destroyed and the employer left without any redress whatever. It must be remembered that the local labor organization financially able to respond for the damage it inflicts has not yet appeared in our economic life.

The employer in this case is not involved in any dispute of any kind. It stands ready and willing to deal with any bargaining agency which its employees might care to select. It has repeatedly told its employees that they are free to join the appellant union or any other union they choose; that it makes no difference to the employer whatever. Both the officers and the employees so testified (R. 40, 43, 50, 51, 53, 55, 56, 57, 58, 63, 64). The employees of their own volition have refused to join the appellant union because they could not see where it would help them (R. 53, 64, 65); because the appellant union does not do anything for its

members (R. 58); because there was trouble among appellant union's men (R. 53).

If the appellants have any dispute it is with the respondent's men because they refused, in the exercise of their own free choice, to become members of the appellant's union. Since respondent has no controversy with anyone, it is not involved in any "labor dispute," and, therefore, is not within the restrictive provisions of the Norris-LaGuardia Act.

IV.

The trial court has found on sufficient evidence that the appellants, for the purpose of injuring and destroying the business of the complainant, have conspired and concerted to cause, and have caused, false and misleading signs, placards and banners to be placed before the complainant's meat markets, have falsely accused the complainant of being unfair to organized labor in its dealings with its employees, and have prevented patrons and prospective patrons of the complainant from patronizing the meat markets by molestation, annoyance, threats and intimidation causing respondent irreparable damage (Finding of fact 6, R. 7). We believe the Norris-LaGuardia Act has no application for the reasons stated in the preceding chapters, but if the construction urged by the appellant is to be adopted so as to deprive the respondent of effective, equitable relief on the facts of this case, then the Act is unconstitutional as a violation of the due process clause contained in the fifth amendment to the Constitution.

Truax vs. Corrigan, 257 U. S. 312, 42 S. Ct. 124.

The above described acts if committed by anyone other than a labor union, would clearly be subject to restraint by a court of equity. The appellants urge that because their acts relate to a claimed labor dispute, the respondent is not

entitled to injunctive relief under the Norris-LaGuardia Act. As construed by the appellant, the law grants an immunity to a tortfeasor merely because the tort was committed in the assertion of a claimed labor dispute. So construed the act would be arbitrary and unreasonable and would be unconstitutional under the fifth amendment to the Constitution.

Truax vs. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124.

If the Act is to be so construed, it would also be unconstitutional under Article 3, Section 1, of the Constitution which provides that the judicial power of the United States "shall be vested" in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish. Section 2 provides that the judicial power shall extend "to all cases in law and equity * * * between citizens of different states * * *." Although Congress establishes the inferior courts and distributes the jurisdiction among them, the judicial power is derived from the Constitution.

In *Martin vs. Hunter,* 1 Wheat. 304, 328, 14 U. S. 304, 328, the court said:

> "* * * The judicial power of the United States *shall* be vested (not *may* be vested) in one supreme court, and in such inferior courts as congress may, from time to time, ordain and establish * * *. The judicial power must, therefore, be vested in some court, by congress; and to suppose, that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose, that, under the sanction of the constitution they might defeat the constitution itself; a construction which would lead to such a result cannot be sound.
>
> "* * *

"If, then, it is a duty of Congress to vest the judicial power of the United States, it is a duty to vest the whole judicial power. The language, if imperative as to one part, is imperative as to all. If it were otherwise, this anomaly would exist, that congress might successively refuse to vest the jurisdiction in any one class of cases enumerated in the constitution, and thereby defeat the jurisdiction as to all; for the constitution has not singled out any class on which congress are bound to act in preference to others.

"* * * It would seem, therefore to follow, that congress are bound to create some inferior courts, in which to vest all that jurisdiction which, under the constitution, is exclusively vested in the United States, and of which the supreme court cannot take original cognizance. They might establish one or more inferior courts; they might parcel out the jurisdiction among such courts, from time to time, at their own pleasure. But the whole judicial power of the United States should be, at all times, vested, either in an original or appellate form, in some courts created under its authority."

The Norris-LaGuardia Act merely relates to relief which shall be given in cases involving labor disputes. It does not oust the federal courts from jurisdiction to hear and determine such cases.

This action was properly commenced in federal court because of the diversity of citizenship, and the evidence introduced establishes a right to equitable relief. In that situation, to construe the Norris-LaGuardia Act to deprive the federal courts of the power to grant otherwise appropriate equitable relief would amount, we believe, to granting jurisdiction, but withholding the power to grant relief.

Although the limitations upon the power of Congress to regulate federal courts have never been precisely defined by this court, it is plain that there are certain attributes inherent in the judicial power and inseparable from it which can neither be abrogated nor rendered practically inoperative.

Michaelson vs. U. S., 266 U. S. 42, 66, 45 S. Ct. 18, 20, 68 L. Ed. 192, 35 A. L. R. 451.

To confer jurisdiction upon a lower federal court to hear controversies such as this but deny the power to grant appropriate equitable relief to which the litigants are entitled under the law, would be an unconstitutional limitation upon the judicial power of the court. The construction urged by the appellant would, we believe, have that effect.

If the Norris-LaGuardia Act is construed to prohibit equitable relief by way of injunction on the facts of this case, we submit that it would be unconstitutional because it deprives the plaintiff of its property without due process of law and would make an unreasonable and arbitrary classification and would be an unconstitutional limitation upon the judicial power of the federal courts.

CONCLUSION.

We respectfully submit that the Circuit Court of Appeals has correctly decided the case and should be affirmed.

Respectfully submitted,

WALTER L. GOLD,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 293.—October Term, 1937.

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Petitioners,
vs.
E. G. Shinner & Co., Inc.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 28, 1938.]

Mr. Justice Roberts delivered the opinion of the Court.

This is a suit to restrain the petitioners from picketing the respondent's place of business; from coercing the respondent to discharge any of its employes who do not belong to the petitioning union, or to compel them to become members of the union and to accept it as their bargaining agent and representative; and from advertising that the respondent is unfair to organized labor or molesting customers or prospective customers or persuading them to cease patronizing it. After a hearing, and upon findings of fact and conclusions of law, the District Court granted a preliminary injunction. The Circuit Court of Appeals affirmed.[1] Upon final hearing the parties relied upon the record as made in the preliminary hearing and some additional testimony.

The District Court found the following facts: The respondent is a Delaware corporation maintaining five meat markets in Milwaukee, Wisconsin. The petitioners are, respectively, an unincorporated labor union and its business manager, citizens and residents of Wisconsin. The respondent's employees number about thirty-five; none of them are members of the petitioning union. The petitioners made demand upon the respondent to require its employes, as a condition of their continued employment, to become members of the union. The respondent notified the employes that they were free to do this and that it was willing to permit them to join but they declined and refused to join. The

[1] Lauf *v.* Shinner & Co., 82 F. (2d) 68.

union had not been chosen by the employes to represent them in any matter connected with the respondent. For the purpose of coercing the respondent to require its employes to join the union and to accept it as their bargaining agent and representative, as a condition of continued employment, and for the purpose of injuring and destroying the business if the respondent refused to yield to such coercion, the petitioners conspired to do the following things and did them: They caused false and misleading signs to be placed before the respondent's markets; caused persons who were not respondent's employes to parade and picket before the markets; falsely accused respondent of being unfair to organized labor in its dealings with employes, and, by molestation, annoyance, threats, and intimidation prevented patrons and prospective patrons of respondent from patronizing its markets; respondent suffered and will suffer irreparable injury from the continuance of the practice and customers will be intimidated and restrained from patronizing the stores as a consequence of petitioners' acts. There is more than $3,000 involved in the controversy.

The District Court held that no labor dispute, as defined by federal or state law, exists between the respondent and the petitioners or either of them; that the respondent is bound to permit its employes free agency in the matter of choice of union organization or representation; and that the respondent had no adequate remedy at law. It entered a final decree enjoining the petitioners from seeking to coerce the respondent to discharge any of its employes for refusal to join the union or to coerce the respondent to compel employes to become members of the organization, from advertising that the respondent is unfair to organized labor, and from annoying or molesting patrons or persuading or soliciting customers, present or prospective, not to patronize the respondent's markets.

The Circuit Court of Appeals affirmed the decree.[2] By reason of alleged conflict with a decision of the Supreme Court of Wisconsin, and with our decision in *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, we granted the writ of certiorari.

In the Court of Appeals the petitioners assigned error to certain of the District Court's findings of fact as well as to its conclusions of law. In this court the only errors assigned are to the holdings

[2] 90 F. (2d) 250.

that, on the facts found, there was no labor dispute and that the Norris-LaGuardia Act and the Wisconsin Labor Code had no bearing on the case as made. In these circumstances we accept the findings of fact and confine our inquiry to the correctness of the district court's conclusions based upon them.

The institution of the suit in the federal court is justified by the findings as to diversity of citizenship and the amount in controversy. As the acts complained of occurred in Wisconsin the law of that State governs the substantive rights of the parties. But the power of the court to grant the relief prayed depends upon the jurisdiction conferred upon it by the statutes of the United States.

First. The District Court erred in holding that no labor dispute, as defined by the law of Wisconsin, existed between the parties. Section 103.62, paragraph (3) of the Wisconsin Labor Code,[3] is:

"The term 'labor dispute' includes any controversy concerning the terms and conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or concerning employment relations or any other controversy arising out of the respective interests of employer and employe, regardless of whether or not the disputants stand in the proximate relation of employer and employe."

The District Court was bound by the construction of the section by the Supreme Court of the State,[4] which has held a controversy indistinguishable from that here disclosed to be a labor dispute within the meaning of the statute.[5]

Second. The District Court erred in not applying the provisions of Section 103.53[6] of the Wisconsin Labor Code, which declares certain conduct lawful in labor disputes; *inter alia* "giving publicity to . . . the existence of, or the facts involved in, any dispute . . . by . . . patrolling any public street . . . without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;" advising, urging, or inducing, without fraud, violence or threat thereof, others to cease to patronize any person; peaceful picketing or patrolling, whether singly or in numbers. A Wisconsin court could

[3] Wisconsin Statutes, 1937, chap. 103, § 103.62.

[4] Senn *v.* Tile Layers Union, *supra*, p. 477.

[5] American Furniture Co. *v.* Chauffeurs, Teamsters and Helpers Union, 222 Wis. 338, 268 N. W. 250. See, also, Senn *v.* Tile Layers Union, *supra*.

[6] Wisconsin Statutes, 1937, Chap. 103, § 103.53.

not enjoin acts declared by the statute to be lawful;[7] and the District Court has no greater power to do so. The error into which the court fell as to the existence of a labor dispute led it into the further error of issuing an order so sweeping as to enjoin acts made lawful by the State statute. The decree forbade all picketing, all advertising that the respondent was unfair to organized labor and all persuasion and solicitation of customers or prospective customers not to trade with respondent.

Third. The District Court erred in granting an injunction in the absence of findings which the Norris-LaGuardia Act[8] makes prerequisites to the exercise of jurisdiction.

Section 13 (c) of the Act[9] is:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of the persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether or not the disputants stand in the proximate relation of employer and employe."

This definition does not differ materially from that above quoted from the Wisconsin Labor Code, and the facts of the instant case bring it within both.

Section 7[10] declares that "no court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined" except after a hearing of a described character, "and except after findings of fact by the court, to the effect (a) that unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained" and that no injunction "shall be issued on account of any threat or unlawful act excepting against the person or persons, association or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same . . ." By subsections (b) to (e) it is provided that relief shall not be granted unless the court finds that substantial and irreparable injury to complainants' property will follow; that as to each item of relief granted greater injury will be inflicted upon the complainant by

[7] Senn v. Tile Layers Protective Union, 222 Wis. 383, 400, 268 N. W. 270, 872; American Furniture Co. v. Chauffeurs, Teamsters and Helpers Union, *supra*.

[8] Act of March 23, 1932, c. 90, 47 Stat. 70, U. S. C. Tit. 29, § 101 *et seq.*

[9] 47 Stat. 73; U. S. C. Tit. 29, § 113 (c).

[10] 47 Stat. 71; U. S. C. Tit. 29, § 107.

denying the relief than will be inflicted upon defendants by granting it; that complainant has no adequate remedy at law; and that the public officers charged with the duty to protect complainants' property are unable or unwilling to provide adequate protection. There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States.[11] The District Court made none of the required findings save as to irreparable injury and lack of remedy at law. It follows that in issuing the injunction it exceeded its jurisdiction.

Fourth. The Court of Appeals erred in holding that the declarations of policy in the Norris-LaGuardia Act and the Wisconsin Labor Code to the effect that employes are to have full freedom of association, self-organization, and designation of representative of their own choosing, free from interference, restraint or coercion of their employers, puts this case outside the scope of both acts since respondent cannot accede to the petitioners' demands upon it without disregarding the policy declared by the statutes. This view was expressed in the court's first opinion on the appeal from the issue of an interlocutory injunction,[12] and the opinion on the appeal from the final order adopts what was said on the earlier appeal as the law of the case. We find nothing in the declarations of policy which narrows the definition of a labor dispute as found in the statutes. The rights of the parties and the jurisdiction of the federal courts are to be determined according to the express provisions applicable to labor disputes as so defined.

Fifth. Since the courts below were of opinion that a labor dispute, as defined by state and federal statutes, had not been shown, they did not pass on the questions of the legality, under the Wisconsin law, of the acts charged to have been done by the petitioners or the constitutionality of that law in legalizing any of such acts. As the case must go back for further proceedings, we express no opinion upon these questions.

The judgment is reversed and the cause remanded to the District Court for further proceedings in conformity with this opinion.

So ordered.

Mr. Justice CARDOZO and Mr. Justice REED took no part in the consideration or decision of this case.

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[11] Kline v. Burke Construction Co., 260 U. S. 226, 233-234.

[12] 82 F. (2d) 68, 72-73.

SUPREME COURT OF THE UNITED STATES.

No. 293.—October Term, 1937.

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Petitioners,

vs.

E. G. Shinner & Co., Inc.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 28, 1938.]

Mr. Justice Butler, dissenting.

The opinion just announced reflects faithfully though quite nakedly the findings of fact. These and uncontradicted details disclose the circumstantial basis of the suit. Local No. 73 is an unincorporated labor union, never in any way related to respondent. None of its employees is a member of the union; all have definitely rejected the suggestion that they join it. In every legal sense, the union is a stranger both to respondent and its employees. Shortly before petitioners conspired to destroy respondent's business, one Joyce, of the American Federation of Labor, called by telephone respondent's vice-president, Russell, at his Chicago office. The latter's uncontradicted narration of the conversation follows: "Mr. Joyce . . . said 'We are in Milwaukee and want you fellows to join our Union up there. They tell me up there you are the man I must see, to get a contract signed for Shinner & Company with the Butchers Union up there.' I told him I could not sign any contract with him, that our men had their own association and were perfectly well satisfied, and didn't want to belong to any other union. He said 'Well, I am going there tonight and if you don't join I will declare war on you.' I said 'There is nothing I can do about it.' He said 'All right, the war is on, and may the best man win,' and he hung up."

Then followed *a demand by the union that respondent compel its employees, on pain of dismissal from their employment, to join the union and constitute it their bargaining representative and agent.* Respondent rightly declined to undertake any such interference with the liberty of its employees, but informed them that they were

free to do as they saw fit. It left them wholly free to join or not to join the union; the union was left free to invite, urge, persuade or induce them to join. Every one who respects the lawful exercise of individual liberty of action must regard the attitude of the respondent as being above criticism and beyond reproach. The opinion of the Court just announced does not suggest a contrary view.

Under these circumstances, the union, in order to force respondent to coerce its employees, and in pursuance of a conspiracy to that end, publicly and falsely accused respondent of being unfair to labor in dealing with its employees; and by means of false placards and banners and by picketing, molestation, annoyance, threats and intimidation it prevented, and when this suit was brought was continuing to prevent, patrons and prospective patrons from dealing with respondent—all to the latter's serious and irreparable injury.

1. Respondent's business constitutes a property right; and the free opportunity of respondent and its customers to deal with one another in that business is an incident inseparable therefrom. It is hard to imagine a case which more clearly calls for equitable relief; and the court below rightly granted an injunction. *Truax* v. *Corrigan*, 257 U. S. 312, 327, and cases cited.

But here it is held that the decree conflicts with the Norris-La Guardia Act. That the action demanded by petitioners of respondent with respect to its employees, if taken, would have been morally indefensible is plain; that it would have been against the declared policy of the Act is equally plain. That Act, 29 U. S. C., § 102,[1] declares that under prevailing conditions, the individual unorganized worker, "though he should be free to decline to associate with his fellow workers" should "have full freedom of asso-

[1] Section 2 of the Act of March 23, 1932, 47 Stat. 70, 29 U. S. C. § 102:

"Public policy in labor matters declared. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-

ciation, self-organization, and designation of representatives of his own choosing," and should "be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives," etc. This declaration of policy, as the introductory clause plainly recites, was intended as an aid "in the interpretation" of the Act and "in determining the jurisdiction and authority of the courts" under the Act. If respondent had joined the conspiracy and yielded to the demand of the union its action as an employer of labor unquestionably would have constituted an "interference, restraint, or coercion" of its employees in the designation of their representatives, in the teeth of the declared policy of the Act.

The opinion of the Court asserts, however, that this definite declaration of policy in no way narrows the definition of the phrase "labor dispute" found in substantive provisions of the Act. But that statement cannot be intended to suggest that the declaration of policy does not affect the meaning and application of the words used, for the opening clause of that declaration is precisely to the contrary. Whether a labor dispute exists in a given case depends upon the facts; and in each case the phrase "labor dispute" is to be interpreted in harmony with the declared policy of the Act. That is the congressional mandate and courts are required to observe it. In *Ozawa* v. *United States*, 260 U. S. 178, 194, we said "It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail." See also to the same effect, *Heydenfeldt* v. *Daney Gold, etc. Co.*, 93 U. S. 634, 638; *Holy*

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organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, of their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted."

Trinity Church v. *United States*, 143 U. S. 457, 459 *et seq.*; *Fleischmann Co.* v. *United States*, 270 U. S. 349, 360; *Karnuth* v. *United States*, 279 U. S. 231, 243. The principle applies here with peculiar force; for it is an unnatural assumption to suppose that Congress intended by general definition of the flexible term "labor dispute" to annul its own very explicit declaration in respect to the policy to be observed by the courts in the administration of the Act.

The decision just announced ignores the declared policy of Congress that the worker should be free to decline association with his fellows, that he should have full freedom in that respect and in the designation of representatives, and especially that he should be free from interference, restraint, or coercion of employers. To say that a "labor dispute" is created by the mere refusal of respondent to comply with the demand that it compel its employees to designate the union as their representative unmistakably subverts this policy and consequently puts a construction upon the words contrary to the manifest congressional intent.

Moreover, the immediately preceding section of the Act, 29 U. S. C., § 101,[2] provides that no restraining order or injunction in a case involving or growing out of a labor dispute shall issue "contrary to the public policy declared in this chapter." Sections 101 and 102 taken together constitute nothing less than an expression of the legislative will that the court shall enforce the public policy set forth in § 102 and shall have regard thereto in reaching a determination as to whether it has jurisdiction to issue an injunction in any particular case. Since the whole aim of the injury here inflicted and threatened to be inflicted by the union was to compel respondent to influence and coerce its employees in the designation of their representatives, the acts of the union were in plain defiance of the declared policy of Congress, and find no support in its substantive provisions.

2. But putting aside the congressional declaration of policy as an indication of meaning, and considering the phrase entirely

[2] Section 1 of the Act of March 23, 1932, 47 Stat. 70, 29 U. S. C. § 101:
"Issuance of restraining orders and injunctions; limitation; public policy. No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter."

apart, the facts of this case plainly do not constitute a "labor dispute" as defined by the Act. Undoubtedly "dispute" is used in its primary sense as meaning a verbal controversy involving an expression of opposing views or claims. The Act itself, 29 U. S. C., § 113 (c), so regards it: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment," etc. In this case, there was no interchange or consideration of conflicting views in respect of the settlement of a controversial problem. There was simply an overbearing demand by the union that respondent should do an unlawful thing and a natural refusal on its part to comply. If a demand by a labor union that an employer compel its employees to submit to the will of the union, and the employer's refusal, constitute a labor controversy, the highwayman's demand for the money of his victim and the latter's refusal to stand and deliver constitute a financial controversy.

There being an utter lack of connection between the petitioners and respondent or its employees, the union was an intruder into the affairs of the employer and its employees. The union had the right to try to persuade the employees to join its organization; but persuasive methods failing, its right under the law in any manner to intermeddle came to an end. It lawfully could not coerce the employees to abandon their own organization and to join Local No. 73 any more than the employees could coerce the union to disband and its members to join their organization. Otherwise, the worker would not "be free," as the Act requires, "to decline to associate with his fellows"; nor would he have "full freedom of association, self-organization and designation of representatives of his own choosing." Clearly the union could not be authorized by statute to resort to coercive measures *directly* against the employees to compel submission to its wishes, for that would be to give one group of workmen autocratic power of control in respect of the liberties of another group, in contravention of the Fifth Amendment as well as of the policy of Congress expressly declared in this Act. And that being true, the attempt to coerce submission through constrained interference of the employer was equally unlawful.

So far as concerns the question here involved, the phrase "labor dispute" is the basic element of the Act. For unless there was such a dispute—that is to say, a "controversy"—the Act does not

even purport to limit the district court's jurisdiction in equity. The phrase must receive a sensible construction in harmony with the congressional intent and policy. There can be no dispute without disputants. Between whom was there a dispute here? There was none between the union and respondent's employees; for the latter were considered by the union mere pawns to be moved according to the arbitrary will of the union. There was none between respondent and its employees; for they were in full accord. And finally there was none between the union and respondent; for it would be utterly unreasonable to suppose Congress intended that the refusal of a conscientious employer to transgress the express policy of the law should constitute a "labor dispute" having the effect of bringing to naught not only the policy of the law, but the obligation of a court of equity to respect it and to restrain a continuing and destructive assault upon the property rights of the employer, as to which no adequate remedy at law existed.

3. As to what constitutes a "labor dispute" within the meaning of the Wisconsin statute, the interpretation put upon it by the highest court of that state is binding here. *Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32. *Morehead* v. *N. Y. ex rel Tipaldo*, 298 U. S. 587, 609. But this Court authoritatively declares the meaning of Acts of Congress and is required to decide for itself what constitutes a "labor dispute," which, within the meaning of the Norris-La Guardia Act, will have the effect of abridging the jurisdiction of a federal court.

The things here found to have been done for the purpose of coercing respondent to compel its employees to join the union are not declared lawful by the Wisconsin statute or by the courts of that state. Cf. *American Furn. Co.* v. *I. B. of T., C. etc.*, 222 Wis. 338; *Senn* v. *Tile Layers Protective Union*, 222 Wis. 383. While this Court refrains from condemning the means employed by petitioners, the opinion contains nothing to suggest that their conduct was not wrongful and unlawful. The publicity and peaceful picketing declared legal by Wisconsin laws are utterly unlike the display of libelous signs, parade of pickets, false accusations, molestation, threats and intimidation employed by the union, not on behalf of former or present employees of respondent, but to destroy the business of respondent. Here, by means everywhere held to be unlawful, the union carried on and was continuing to carry on a campaign of de-

struction in order to coerce respondent to deprive its employees of their right of freedom of association, self-organization and designation of representatives of their own choosing. That the Wisconsin statute does not attempt to make lawful the means employed by the union to impose its will upon respondent and its employees clearly appears from this Court's portrayal of that law in *Senn* v. *Tile Layers Union*, 301 U. S. 468.

The opinion in that case states (p. 478): "The judgment of the highest court of the state establishes that both the means employed and the end sought by the unions are legal under its law . . . The Legislature of Wisconsin has declared that 'peaceful picketing and patrolling' on the public streets and places shall be permissible 'whether engaged in singly or in numbers' provided this is done 'without intimidation or coercion' and free from 'fraud, violence, breach of the peace or threat thereof.' The statute provides that the picketing must be peaceful; and that term as used implies not only absence of violence but absence of any unlawful act. It precludes the intimidation of customers. It precludes any form of physical obstruction or interferenee with the plaintiff's business. It authorizes giving publicity to the existence of the dispute 'whether by advertising, patrolling any public streets or places where any person or persons may lawfully be'; but precludes misrepresentation of the facts of the controversy. And it declares that 'nothing herein shall be construed to legalize a secondary boycott.' . . . Inherently, the means authorized are clearly unobjectionable. In declaring such picketing permissible Wisconsin has put this means of publicity on a par with advertisements in the press. . . . The picketing was peaceful. The publicity did not involve a misrepresentation of fact; nor was any claim made below that relevant facts were suppressed."

The state statute, defining "labor disputes" and declaring the means that lawfully may be used against employers in such controversies, does not purport to make lawful either the end here sought by petitioners or the means they employed to attain it. Their purpose was not unionization of respondent's employees, for they already belonged to a labor organization of their own choosing. The purpose was to coerce the employees to join a particular organization which they had already repudiated. There is nothing in the state or federal statutes that purports to give labor unions

or individuals so contriving the status of party to a "labor dispute." Coercion of employees to surrender their freedom of self-organization is repugnant to both statutes. Wis. Laws, 1935, c. 551, § 5. 29 U. S. C. §§ 101, 102. Cf. *American Furniture Co.* v. *I. B. of T. C. etc.*, 222 Wis. 338; *Senn* v. *Tile Layers Protective Union*, 222 Wis. 383; *Senn* v. *Tile Layers Union*, 301 U. S. 468. There is no ground upon which petitioners' purpose in this case or the means employed to accomplish it can be supported as lawful.

4. The case is a simple one. Respondent's employees had no connection with the union, and were unwilling to have any. The union, being unable to persuade the employees to assent to its wishes in that regard, undertook to subjugate them to its will by coercing an unlawful interference with their freedom of action on the part of the employer. If that is a "labor dispute," destructive of the historical power of equity to intervene, then the Norris-La Guardia Act attempts to legalize an arbitrary and alien state of affairs wholly at variance with those principles of constitutional liberty by which the exercise of despotic power hitherto has been curbed. And nothing is plainer under our decisions than that if the Act does that, its effect will be to deprive the respondent of its property and business without due process of law, in contravention of the Fifth Amendment. *Truax* v. *Corrigan, supra*, 327-328.

I am of opinion that the circuit court of appeals rightly held that this case discloses no "labor dispute" within the meaning of the Norris-La Guardia Act; that the union's coercive attack upon respondent was unlawful under state law and in violation of the policy declared by the federal statute, and was properly enjoined; and that, there being no "labor dispute" as defined by that Act, its provisions as to allegations, proof, and findings do not apply. I would affirm the judgment.

Mr. Justice McReynolds concurs in this opinion.